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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1932**

## No. 388

LETCHER SPICER, BY SAM SPICER, GUARDIAN AND COMMITTEE, PETITIONER,

*vs.*

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

**PETITION FOR CERTIORARI FILED SEPTEMBER 21, 1932**

**CERTIORARI GRANTED OCTOBER 24, 1932**

**(37,085)**

( )

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1932

# No.

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LETCHER SPICER, BY SAM SPICER, GUARDIAN AND COMMITTEE, PETITIONER,

*vs.*

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

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[fol. 1] [Caption omitted]

[fol. 2]

## IN CIRCUIT COURT OF BREATHITT COUNTY

Letcher Spicer, by Sam Spicer, Committee, and Sam Spicer, Guardian and Committee for Letcher Spicer, Plaintiffs,

vs.

J. Bryan Smith, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank & Trust Company, Defendants

Order in Vacation

Minute Entry—Oct. 19, 1931

Came this day plaintiff and filed their petition herein against the defendant herein, and summons and one copy issued thereon, this the 22nd day of Sept. 1931, and the same is now noted of record.

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In Circuit Court of Breathitt County

[Title omitted]

[fol. 3] Petition—Filed Sept. 22, 1931

The Plaintiff, Letcher Spicer by Sam Spicer, Committee and Guardian and Sam Spicer, Committee and Guardian for Letcher Spicer, incompetent, states that said Letcher Spicer was duly and regularly enlisted soldier in the army of the United States in the World War, and that while he was enlisted and engaged in said service, to-wit: on May 1, 1918, the Treasury department of the United States Bureau of War Risk Insurance, issued to him certificate No. 2253023, effective of that date, by which he was insured in the sum of Ten Thousand (10,000.00) Dollars, payable in case of death or total permanent disability in monthly installments of $57.50, a copy of said certificate is filed herewith and made part hereof and marked Exhibit "A" and the original will be filed if required by the court. Said insurance was granted

under an act entitled "An act to authorize the establishment of a bureau of War Risk Insurance in the Treasury Department, approved Sept. 2, 1914, and for other purposes, approved October 2, 1917, and subject in all respects to the provisions of such Act, or any amendments thereof, and of all regulations thereunder, now in force or hereafter adopted; that during this period of service the said Letcher Spicer became permanently disabled by total loss of his mind and is now confined in the United States Veterans' Hospital at Chillicothe, Ohio; that by an order duly and regularly made by the Breathitt County Court on the 29 day of September, 1919, the Plaintiff, Sam Spicer, was duly and regularly appointed the Guardian of said Letcher Spicer and duly qualified as such by taking the oath required by law [fol. 4] and executing bond, a certified copy of said order is filed herewith and is made part hereof, marked Exhibit "B".

Plaintiff's state that the Hargis Bank and Trust Company, a Corporation was duly incorporated under the Banking Laws of Kentucky and duly created as such, with power to engage in the banking business at Jackson, Kentucky, with powers to sue and be sued, contract and be contracted with, and was duly existing as such and engaged in the banking business at Jackson, Kentucky, on January 1st, 1920 and during the entire period from that time to the 5th day of February, 1930, at which time said Bank & Trust Company closed its doors; that after it closed its doors its assets and property of every kind was taken over by the Banking Department of the state of Kentucky and placed in charge of the defendant, J. Bryan Smith, as Special Deputy Banking Commissioner and Liquidating Agent of said Bank; and that said defendant now has in his hands and under his charge and in his possession the assets of every kind and character including money, securities, real estate and all assets and property of said Hargis Bank and Trust Company.

They state that at the time said Bank closed its doors and ceased to function, the plaintiff, Sam Spicer, Guardian of Letcher Spicer had on deposit in said Hargis Bank & Trust Company, the sum of $6,070.80, under contract with said bank, by which it agreed to pay the plaintiff interest thereon at the rate of 5% per annum, payable semi-annually, all of which money was derived from and paid by the United States Government to said Guardian as war risk insurance

and disability compensation awarded and due to his said ward and his said Cestui Qui Trust, to-wit: Letcher Spicer. That plaintiff has repeatedly demanded the payment of said Hargis Bank & Trust Company before it closed its doors and [fol. 5] that said Bank failed to pay any part thereof and that there is now due plaintiffs the sum of $6070.80 with six per cent per annum, interest thereon from January 1, 1930, until paid. The sum of $6070.80, includes interest accrued up to January 1, 1930, at the rate of 5%.

Plaintiffs state that under the laws of the United States, said Trust Fund is a preferred claim against all of the property and assets of every kind of the Hargis Bank & Trust Company owned by it at the date that it closed its doors and is a preferred claim against all of the assets, notes, choses in action, money and real estate of said bank which came into the hands of the defendant, J. Bryan Smith, Special Deputy Banking Commissioner and Liquidating Agent of the Hargis Bank & Trust Company, and on the assets and property of every kind and character, which came into said defendant's hands and that the plaintiff has a lien upon all bonds, securities, notes, real estate, mortgages, and every species of property owned by said Hargis Bank & Trust Company and which came into defendant's hands to secure the payments of their demand hereinaboveasserted and that their lien is prior and superior to all other claims of all other persons and all depositors and all demands of every kind and character against said bank and the defendant.

Wherefore, plaintiffs pray that its lien be enforced for a judgment against the defendant for the sum of $6070.80, with interest thereon at the rate of 6% from January 1, 1930, until paid and that the same be adjudged as a preferred claim against the estate of the Hargis Bank and Trust Company and against all moneys, properties of every kind and character, choses in action and all the assets of said bank that came into the hands of the defendant; for their costs herein and for all proper relief.

[fol. 6] A. H. Patton, O. H. Pollard, Attorneys for Plaintiff.

*Duly sworn to by Sam Spicer. Jurat omitted in printing.*

EXHIBIT "A" TO PETITION

The United States of America, Treasury Department, Bureau of War Risk Insurance, Washington, D. C.

Certificate No. 2,253,023

Date insurance: Effective May 1, 1918.

This certifies That Letcher Spicer has applied for insurance in the amount of $10,000, payable in case of death or total permanent disability in monthly installments of $57.50.

Subject to the payment of the premiums required, this insurance is granted under the authority of an Act "amending" An act entitled An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department, approved September 2, 1914, and for other purposes, "approved October 6, 1917, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which together with the applications for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

[fol. 7] W. G. McAdoo, Secretary of the Treasury.
William C. DeLanoy, Director of the Bureau of War Risk Insurance.

Countersigned at Washington, D. C.
S. R. Robbins, Registrar. (Coat of Arms.)

Copy. Attest:
Cora M. Noble, Notary Public, Breathitt County.

On the reverse side of the foregoing petition appears the following endorsement: Filed in office Sept. 22, 1931; Summons and 1 copy issued thereon.

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IN CIRCUIT COURT OF BREATHITT COUNTY

[Title omitted]

MINUTE ENTRY—Oct. 23, 1931

Came this day defendant, J. Bryan Smith and filed general demurrer.

[fol. 8] In Circuit Court of Breathitt County

[Title omitted]

Demurrer—Filed Oct. 23, 1931

The defendant, J. Bryan Smith, Special Deputy Banking Commissioner in charge of Hargis Bank & Trust Company in liquidation, demurs generally to the plaintiff's petition because same does not state facts sufficient to constitute or support a cause of action against him.

W. L. Kash, Atty. for Defendant.

[File endorsement omitted.]

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In Circuit Court of Breathitt County

[Title omitted]

[fol. 9] Order Overruling Demurrer—Nov. 18, 1931

The demurrer of the defendant to the petition was heard by the court and the court being advised, it is ordered that said demurrer be overruled and the defendant excepts.

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In Circuit Court of Breathitt County

[Title omitted]

Minute Entry—Nov. 27, 1931

Came this day defendant — filed answer herein.

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In Circuit Court of Breathitt County

[Title omitted]

[fol. 10] Answer—Filed Nov. 27, 1931

The defendant, J. Bryan Smith, Special Deputy Banking Commissioner in charge of Hargis Bank & Trust Company

in Liquidation, for answer and defense to plaintiff's petition denies that under the laws of the United States, said alleged trust fund as set out in the petition is a preferred claim against all or any of the property or assets of every kind or any kind of the said Hargis Bank & Trust Company owned by it at the date that it closed its doors or that it owned at any other time, or that it is a preferred claim against all or any of the assets, notes, choses in action, money or real estate of said bank which came into the hands of this defendant, and denies that same is a preferred claim on the assets or property of every kind or character which came into said defendants hands, or that the plaintiff has a lien upon all or any bonds, securities, notes, real estate, mortgages or every or any species of property owned by said Hargis Bank & Trust Company, or which came into defendant's hands, to secure the payment of plaintiff's alleged demand or any of same, or that his alleged lien is prior or superior to all or any other claims of all or any other persons or all or any depositors or all demands of every kind or any kind or character against said bank or this defendant, or either of them.

The defendant for further answer herein states that at the time the said Hargis Bank & Trust Company closed its doors for business it was indebted to depositors and other creditors in the sum of approximately eight hundred thousand dollars; that about two hundred thousand dollars of said amount was owing to the Fifth-Third Union Trust Company of Cincinnati, Ohio, and to the National Bank of Kentucky, and to the First National Bank of Louisville, Kentucky, and that these banks had in their hands notes, mortgages and other securities of said Hargis Bank & [fol. 11] Trust Company as collateral security for the payment of said two hundred thousand dollars; that the notes, mortgages and other securities held by said bank as collateral security for the payment of said two hundred thousand dollars amounted to approximately the sum of four hundred thousand dollars, and that said banks have and will appropriate and apply enough of said collateral securities to pay the whole of said indebtedness, and that at the time said Hargis Bank & Trust Company closed its doors for business on the said 5 day of February, 1930, that it owed depositors and other creditors the sum of approxi-

mately six hundred thousand dollars, and that the property and assets then owned by it and which came into the hands of this defendant, with which to pay said depositors was and is not worth probably more than three hundred thousand dollars, and that therefore said bank will not pay said depositors and other creditors more than fifty per cent of their said deposits, and probably much less than fifty per cent of their said deposits, and that if plaintiff is permitted to recover the whole of his said deposit that it will materially lessen the amounts to be paid the said other depositors.

Defendant states that the plaintiff so deposited his said money in said Hargis Bank & Trust Company in the usual and customary way of other depositors; that he had no special agreement or understanding with said Hargis Bank & Trust Company by which said deposit was to be paid in case of insolvency to the exclusion of other depositors, and therefore plaintiff is only entitled to share ratably with the other depositors and creditors of said bank.

[fol. 12]

III

For further answer and defense herein defendant states that after the appointment of the said Sam Spicer as guardian of the said Letcher Spicer as alleged in the petition that the said Sam Spicer duly executed his bond as such guardian for the faithful performance his duties as such with G. R. Spicer and Ed Spicer as sureties; that said bond is dated 21 day of July 1924, and same was duly accepted and approved by the Judge of the Breathitt County Court, a certified copy of which is filed herewith marked exhibit "A".

Defendant states that said bond is a solvent bond and that the plaintiff is amply and fully protected by same; that whatever amount of said deposit is not paid by said insolvent bank in the usual course of business and in winding up its affairs, can be recovered on said bond, and therefore in that way plaintiff, Letcher Spicer can and will be fully and amply protected in the recovery of the whole of said amount sued for.

Wherefore defendant prays that plaintiff's petition be dismissed and that he take not-ing thereby, and he prays for his costs and all proper relief.

W. L. Kash, Atty. for Defendant.

[File endorsement omitted.]

[fol. 13] In Circuit Court of Breathitt County

[Title omitted]

Minute Entry—Dec. 1, 1931

Came the plaintiff and filed demurrer to defendant's Answer herein.

(The demurrer to the defendant's answer does not appear in the record.)

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In Circuit Court of Breathitt County

[Title omitted]

Minute Entry—Dec. 4, 1931

Came the defendant and filed Amended Answer herein.

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[fol. 14] In Circuit Court of Breathitt County

[Title omitted]

Amended Answer—Filed Dec. 24, 1931

The defendant, J. Bryan Smith, Special Deputy Banking Commissioner in charge of Hargis Bank & Trust Company, in Liquidation by leave of court amends his original petition herein and for amendment thereto states that a considera-l- portion of the money sued for by plaintiff, and at least half of same, came into the hands of the said Sam Spicer guardian and committee of Letcher Spicer, from the United States Government and the Bureau of War Risk Insurance on a ten thousand dollar insurance policy held by the said Letcher Spicer; that same was paid to the said Sam Spicer guardian and Committee in instalments of $57.50 per month; that said insurance policy was carried by the said Letcher Spicer as a soldier of the U. S. government under contract of insurance, and by regular monthly payments of premiums by the said insured.

II

For further amended answer herein the defendant states that in addition to the bond of Sam Spicer as guardian filed with the original answer herein that the said Sam Spicer as committee for the said Letcher Spicer on the 8 day of July, 1929, was required to and did execute a [fol. 15] bond in the penal sum of $20,000.00 which was approved by the Breathitt County Court with the Fidelity & Deposit Company of Maryland as surety for the faithful performance of his duties with the regard to the money sued for; that said bond is solvent and in full force and effect, and that same fully protects plaintiff in the recovery of any and all of said money. A certified copy of said bond is filed herewith marked Exhibit "B". Wherefore defendant prays as in his original answer and for all proper relief.

W. L. Kash, Atty. for Deft.

[File endorsement omitted.]

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Here follows demurrer to answer as amended, but there is nor order of record filing same.

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In Circuit Court of Breathitt County

[Title omitted]

Demurrer to Amended Answer—Filed Dec. 4, 1931

The plaintiff demurs to the amended answer and the answer of defendant as amended because said amended answer and answer as amended do not state facts sufficient to constitute a defense.

A. H. Patton, O. H. Pollard, Attorneys for Plaintiff.

[fol. 16] [File endorsement omitted.]

In Circuit Court of Breathitt County

Letcher Spicer, by Sam Spicer, Guardian, etc., Plaintiff,

vs.

J. Bryan Smith, Special Deputy Banking Commissioner, etc., Defendant

Judgment—Dec. 4, 1931

Came plaintiff and filed demurrer to the amended answer herein and to the answer as amended and same being heard and the court advised, it is ordered by the court that said demurrer be sustained and defendant excepts, and the demurrer to the petition having been overruled by the court, to which defendant excepts, and defendant having declined to plead further, this cause is submitted to the court for judgment, and the court being advised, it is adjudged that the plaintiff, *Letcher* Spicer, Guardian and Committee for said Letcher Spicer, recover of the defendant, J. Bryan Smith, Special Deputy Banking Commissioner and liquidating agent in charge of Hargis Bank & Trust Company, the sum of $6,070.80, with interest thereon at the rate of six per cent per annum from January 1st, 1930, until paid, and their cost herein expended.

[fol. 16½] It is further adjudged that the aforesaid judgment is a preferred claim against the estate of Hargis Bank & Trust Company and all monies and properties of every kind and character and assets of the said bank that came into the hands of the defendant as liquidating agent, and that plaintiff has a lien on all of said property and the entire assets of said bank, real, personal and mixed for this judgment and cost, and that said lien is prior and superior to all others, and that the same be enforced and that the defendant, J. Bryan Smith, Special deputy banking and liquidating agent of Hargis Bank and Trust Company, be and he is hereby directed to pay to the plaintiff the aforesaid sums, interest and cost herein adjudged plaintiff, and the defendant, J. Bryan Smith, special deputy banking commissioner, excepts and prays an appeal to the Court of Appeals, which is granted.

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[fol. 17] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 18] IN COURT OF APPEALS OF KENTUCKY

STATEMENT OF APPEAL

The correct names of all the parties appellant and appellee are stated above.

This is an appeal from a judgment of the Breathitt Circuit Court rendered at its October term, 1931, and may be found on pages 16 and 17 of the record.

An appeal was granted below, and appellee has entered his appearance hereto by motion to docket and advance and so no summons is necessary.

Jackson, Ky., April 11, 1932.

(Signed) W. L. Kash, Atty. for Appellant.

Mr. O. H. Pollard, Jackson, Ky., Atty. for Appellee.

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[fol. 18a] IN COURT OF APPEALS OF KENTUCKY

MINUTE ENTRY—April 15, 1932

Came parties, by counsel, and filed motion to docket, advance and submit; which motion is submitted.

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IN COURT OF APPEALS OF KENTUCKY

JOINT MOTION TO ADVANCE

The appellant and appellees move the court to docket this appeal for the Spring Term 1932 to advance and submit the same for hearing.

W. L. Kash, Attorney for Appellant. O. H. Pollard, Attorney for Appellees.

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IN COURT OF APPEALS OF KENTUCKY

ORDER OF SUBMISSION—April 19, 1932

The Court being sufficiently advised, the motion of parties to docket, advance and submit, is sustained and case ordered

docketed for the present term, advanced for hearing and submitted.

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[fol. 19] IN COURT OF APPEALS OF KENTUCKY

J. BRYAN SMITH, Special Deputy Banking Commissioner, etc., Appellant,

v.

LETCHER SPICER'S GUARDIAN AND COMMITTEE, Appellee

Appeal from a Judgment of the Breathitt Circuit Court

JUDGMENT—May 10, 1932

The Court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be reversed and cause remanded for proceedings not inconsistent with the opinion herein; which is ordered to be certified to said court.

It is further considered that the appellants recover of the appellee their costs herein expended.

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[fol. 20] IN COURT OF APPEALS OF KENTUCKY

J. BRYAN SMITH, Special Deputy Banking Commissioner, etc., Appellant,

—

LETCHER SPICER'S GUARDIAN & COMMITTEE, Appellee

Appeal from the Breathitt County Circuit Court

OPINION OF THE COURT BY COMMISSIONER CRYAL REVERSING—May 10, 1932

Sam Spicer, as guardian and committee for Letcher Spicer, recovered judgment in the Breathitt circuit court against J. Bryan Smith, special deputy banking commissioner and liquidating agent of the Hargis Bank and Trust

Company for the sum of $6,070.80, and his claim was adjudged to be preferred, prior and superior to all other claims against the bank. From that judgment the latter has appealed.

By undisputed allegations of the petition it is made to appear that in 1918 while in the military service of the United States in the World War, Letcher Spicer by reason of mental derangement become and has since been totally disabled and incompetent to manage his estate. Under orders of the Breathitt county court, Sam Spicer is the duly [fol. 21] appointed, qualified and acting guardian and committee for the incompetent soldier.

For many years prior to May 5, 1930, the Hargis Bank and Trust Company conducted a general banking business at Jackson in Breathitt county, but because of insolvency (Commonwealth ex rel. etc. v. Hargis Bank and Trust Company, 233 Ky. 801, 26 S. W. (2d) 1045) it was on that date taken over by the State Banking Department and placed in the charge of J. Bryan Smith, special deputy banking commissioner for the purpose of liquidation. At the time the bank closed and ceased to transact business, Sam Spicer, as guardian and committee, had on deposit the sum of $6070.80 which had been paid to him by the United States as compensation and war risk insurance due his ward, Letcher Spicer. The war risk insurance had been paid in monthly installments of $57.50 under the permanent disability provision.

The answer controverted only that part of the petition alleging that the claim of plaintiff was preferred, but attempted to set up certain affirmative defenses which it is unnecessary to enumerate since they are not material to a proper decision of this appeal. The chancellor sustained a demurrer to the answer but overruled a demurrer to the petition and defendants declining to further plead, entered judgment for plaintiff as above indicated.

At the outset it may be noted that appellee does not cite any statute of this state or any decision of its courts as sustaining his position or supporting the chancellor's finding, and in fact, none can be found. On the other hand, it has been held by this court that a guardian or other fiduciary who deposits trust funds in a bank upon interest becomes merely a creditor of the bank and is not entitled to priority or preference as against general creditors in

the distribution of its assets when it becomes insolvent. Fidelity & Casualty Co. of N. Y. v. Farmers & Merchants Bank, 223 Ky. 32, 2 S. W. (2d) 1048; New Farmers Bank [fol. 22] Trustee v. Cockrell, Receiver, 106 Ky. 578, 51 S. W. (2d) 2, 21 Ky. Law Rep. 177. It follows therefore that if authority for giving preference to claims of this or like character is to be found, it must be in Federal Statutes or in cases from other jurisdictions.

A careful examination of the Statutes of the United States fails to reveal any express provision authorizing the preference given to this claim and none has been pointed out, although the brief prepared by eminent counsel for appellee discloses extensive research and study of authorities. Furthermore we find nothing in the Acts of Congress relating to adjusted compensation and war risk insurance from which to draw a reasonable inference that such preference is warranted or was intended. There are, however, a number of cases from courts of other states that are in agreement with the chancellor's finding. See State ex. rel. etc. v. Security Bank of Creighton, (Neb.) 237 N. W. 620; State ex rel. etc. v. First State Bank of Pawnee (Neb.) 237 N. W. 623; Butler v. Cantley, Com'r of Finance, (Mo) 47 S. W. (2d) 258, and authorities cited in those cases. Some of those cases are cited in brief for appellee and no doubt were relied on and had a determining effect in the court below. But in none of them is it claimed that either the adjusted compensation or war risk insurance acts expressly give preference or priority to funds held by fiduciaries for incompetent soldiers. Apparently they are premised on the theory that funds derived under these acts are moneys of the United States until they actually reach the hands of the soldier himself, and when deposited to the credit of a guardian or committee in a bank which proves to be insolvent are entitled to preference under section 3466 Revised Statutes of the United States (31 U. S. C. A. Sec. 191) which reads:

[fol. 23] "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to

cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

The opinion in Butler v. Cantley, supra, refers to the purpose as expressed in the Federal Statutes to give protection to those enlisted in military or naval service, and to the safeguards thrown around funds payable under the acts for the benefit of veterans and their dependents, such as exemption from attachment for debt, from taxation etc. and to the provision for escheat to the United States in certain circumstances; and reasoning from these provisions, reaches the conclusion that the spirit and purpose of the Acts is to retain in the federal government the ownership and control of such funds until they actually come into the hands of the soldier or his dependents as the case may be. Other cases follow the same line of reasoning to the same conclusion and some of these set out the provisions of the acts authorizing the withholding of payments to the guardian when warranted by circumstances, and the penalty prescribed for embezzlement of funds by a guardian. They all in effect hold that the guardian is merely an agent of the government, his possession of the funds being in fact possession by the United States.

[fol. 24] As supporting the theory that a fund deposited by the guardian of a soldier is money of the United States, the case of U. S. Fidelity and Guaranty Co. v. Bramwell, 295 Fed. 331 is cited. But in that case the United States through the superintendent of the Kalmath Indian Reservation caused funds derived from the sale, rent, etc., of tribal lands to be deposited in a bank, and the Guaranty Co. executed and delivered to the United States a bond securing the deposit. Because of insolvency of the bank, the Guaranty Company paid the amount of the deposit to the United States. Under a statute subrogating the surety who pays money on a bond in such instances to all rights of the United States, it was held that the Guaranty Company was entitled to payment of its claim in preference to general creditors. However, in the opinion, it is pointed out that both by the terms of the deposit and the provision of the bond, the debt was due from the bank to the United

States and that under treaty with the Indians and acts of Congress, the United States is guardian of the Indians on the reservation, and as such has the management of their affairs and the collection and disbursement of funds intended for their benefit. Obviously that case has no application here and furnishes no basis for the contention that the debt in question was due from the Hargis Bank & Trust Company to the United States and therefore entitled to preference under the Federal Statutes (R. S. Sec. 3466). In that case the United States was the guardian, deposited the fund and required a bond as security therefor, while in the instant case, an individual acting under orders of the state court is the guardian and deposited the ward's funds in the bank in his name, and neither the guardian nor the bank has been required to execute bond to the United States to secure the deposit. Unquestionably the money in [fol. 25] that case was money of the United States and as such was entitled to preference by virtue of section 3466, supra, and under the Acts of Congress relating to the administration of the affairs of the Indians, the United States was authorized to sue and enforce payment of the deposit.

As we view the matter the question whether this fund was money of the United States, the one question on which the decision of this case must turn, may be determined by the application of a simple though decisive and infallible test, and strained construction and doubtful inferences and implications must give way to this test. If the payment by the United States to the guardian was to the extent thereof a complete and final discharge of its debt and liability to the soldier, then the funds passed from the possession and control of the government and became the estate of the ward. To hold otherwise would in effect hold that in the event of insolvency of the guardian and his surety, the United States would be required to again pay so much of the fund as did not reach the hands of the soldier.

In this state, as in most if not all other jurisdictions, a guardian has the custody and control of the personal estate of his ward and may collect and receive debts and obligations due the ward, (Ky. Statutes, Sec. 2030) and payment to him will operate as a complete discharge of the debtor. Maclay v. Equitable Life Assurance Society, 152 U. S. 499; Taylor v. Berniss, 110 U. S. 42; 12 R. C. L. 1125; 21 R. C. L. 29; 28 C. J. 1130, 1131, and cases cited therein.

The provisions in the Acts of Congress relating to compensation and war risk insurance authorizing withholding payments and for escheat in some circumstances, clearly [fol. 26] applies to money due but which has not been paid to the soldier or to his guardian or committee, and there is no provision whereby funds may be repossessed or escheated by the United States after payment has been made. These acts specifically authorize payments to the guardian appointed under laws of the state of the residence of the claimant. Manifestly it was the intent of Congress that payment to a guardian would be payment to the ward and would operate as a discharge of the government's obligation to the latter and the acts have been so construed by those charged with their administration since payments may be and are made to guardians without requiring bond to be executed to the United States.

We see no escape from the conclusion that the United States parted with possession and control of funds paid to the guardian and was thereby released and discharged of liability to the soldier; therefore the debt of the bank is due to the estate of the incompetent and as such is controlled solely by the laws of this state with respect to preference or priority, and it follows that the court erred in overruling the demurrer to the petition.

Judgment reversed for proceedings in conformity with this opinion.

W. L. Kash, Jackson, Ky., Attorney for Appellant.
O. H. Pollard, Jackson, Ky., Attorney for Appellee.

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[fol. 27] In Court of Appeals of Kentucky

Minute Entry—June 7, 1932

Came appellant, by counsel, and filed petition for rehearing, and notice.

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[fols. 28-30] Petition for Rehearing, Covering Four Pages, Filed June 7, 1932, Omitted from This Print. It Was Denied and Nothing More by Order of June 21, 1932.

[fol. 31] IN COURT OF APPEALS OF KENTUCKY

MINUTE ENTRY—June 14, 1932

Came appellant, by counsel, and filed Response to appellee's petition for rehearing, and notice.

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[fol. 32] Response to petition for rehearing omitted in printing.

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[fols. 33 & 34] IN COURT OF APPEALS OF KENTUCKY

ORDER OVERRULING PETITION FOR REHEARING—June 21, 1932

The Court being sufficiently advised, the petition for rehearing is overruled.

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[fol. 35] IN COURT OF APPEALS OF KENTUCKY

[Title Omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 23, 1932

To the Clerk of the Court of Appeals of Kentucky:

Please prepare and certify forthwith a complete transcript of the entire record in the above entitled cause on appeal to the Supreme Court of the United States, except briefs and orders filing processes. You will include in the transcript order reversing the case and order overruling the petition for rehearing.

O. H. Pollard, Attorney for Appellants.

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[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 24, 1932

The petition herein for a writ of certiorari to the Court of Appeals of the State of Kentucky is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

SEP 21 1932

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1932**

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## No. 388

---

LETCHER SPICER, BY SAM SPICER, GUARDIAN AND COMMITTEE, PETITIONER,

*vs.*

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY.

---

**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.**

---

WILLIAM MARSHALL BULLITT,
*Counsel for Petitioner.*

LEO T. WOLFORD,
O. H. POLLARD,
*Of Counsel.*

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SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1932.**

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# No. 388

---

LETCHER SPICER, BY SAM SPICER, GUARDIAN AND COMMITTEE, PETITIONER,

*vs.*

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY, RESPONDENT.

---

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

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*To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Letcher Spicer, by Sam Spicer, Guardian and Committee, petitions for a writ of certiorari to review the decision of the Court of Appeal of the State of Kentucky rendered on May 10, 1932 (petition for rehearing overruled June 21, 1932), in

J. Bryan Smith, Special Deputy Banking Commissioner, etc., appellant, *vs.* Letcher Spicer's Guardian and Committee, appellee (reported in 244 Ky. 68; 501 S. W. (2nd) 64).

**Reasons Relied on for Allowance of Writ.**

The Court of Appeals of Kentucky, construing the World War Veterans Act of June 7, 1924 (43 U. S. Stat., Sec. 300, page 624), and as amended by Act of March 4, 1925 (43 Stats. 1308; 38 U. S. C. A., Sec. 511), and Section 22, 43 Stat. 613 (U. S. C. A., Sec. 454), and subsequent amendments, held that the moneys paid to the guardian of an incompetent under the provisions of these acts, and on deposit in a bank to the credit of the guardian on a time deposit did not have priority over general creditors of such bank upon its insolvency and liquidation by the State Banking Department (R. 12-17). In construing these Federal statutes, the highest court of the State of Kentucky has,

(*a*) Decided this Federal question of substance which has not heretofore been determined by this Court, and has decided it in a way not in accord with the applicable decisions of this Court;

(*b*) Rendered a decision in direct conflict with the decisions of the highest courts of Missouri, Iowa, Nebraska, and Virginia;

(*c*) Decided this question of Federal law which has not been, but should be, settled by this Court;

(*d*) Decided adversely to the petitioner where a right and title are specially set up and claimed by him under the statutes of the United States.

**Short Statement of the Matter Involved.**

Under the provisions of the World War Veterans' Act, the United States Government paid to the guardian for the incompetent World War Veteran, the petitioner herein, in monthly installments due said incompetent veteran by way of World War Risk Insurance, and in part by way of Adjusted Compensation, aggregating total sum of $6,070.80. This money was deposited by the guardian on a time deposit in the Hargis Bank and Trust Company, which subsequently became insolvent and was taken over by the State Banking Department for Liquidation (R. 1-2).

The incompetent veteran, by his guardian, brought this suit in the Circuit Court of Breathitt County, Kentucky, against the respondent as Special Banking Commissioner and Liquidating Agent of the insolvent bank, to have said funds adjudged preferred and prior to the claims of general creditors (R. 1-3).

The respondent (defendant below) filed a demurrer to the petition which was overruled by the court (R. 5). The respondent then filed an answer (R. 5) and an amended answer (R. 8). The court sustained a demurrer to the answer as amended and rendered a judgment decreeing a priority in favor of the petitioner for the amount claimed and adjudging him a lien on the assets of the insolvent bank in the hands of the respondent as liquidating agent (R. 10). From the judgment the respondent prosecuted an appeal to the Court of Appeals of Kentucky. In the opinion delivered on the 10th day of May, 1932, the Court of Appeals of Kentucky reversed the decision of the

Breathitt Circuit Court and held that there was no priority in favor of the petitioner, and that the lower court erred in overruling the demurrer to the petition, and remanded the case to the Breathitt Circuit Court for proceedings in conformity with said opinion (R. 12).

On the 7th day of June, 1932, and within 30 days from the date of said opinion, this petitioner filed a petition for rehearing in the Court of Appeals of Kentucky (R. 17). Said petition for rehearing was overruled by said court on the 21st day of June, 1932 (R. 18).

A certified copy of the transcript of the record of the proceedings in all of said courts in this case, including the Court of Appeals of the State of Kentucky is submitted herewith, and

A SUPPORTING BRIEF is submitted herewith.

Your petitioner is advised and believes that the judgment of the Court of Appeals of Kentucky in this case is erroneous in manner and form as herewith set forth as appears from said transcript of the record and proceedings.

WHEREFORE your petitioner respectfully prays that a writ of certiorari may be issued out of this Court directed to the Court of Appeals of the State of Kentucky, to the end that the judgment of said court may be reviewed, considered and determined as provided by law and this Honorable Court may correct the errors complained of herein and reverse said judgment, remand said cause and grant such other relief as from

the nature of the case your petitioner may be entitled in pursuance to law.

LETCHER SPICER,
*Petitioner,*
By SAM SPICER,
*Petitioner.*

LEO T. WOLFORD,
O. H. POLLARD,
*Of Counsel.*

STATE OF KENTUCKY,
*County of Breathitt, ss:*

Sam Spicer, being duly sworn, says that he is guardian of the petitioner, Letcher Spicer, mentally incompetent, and that the foregoing petition is true to his own knowledge; he says that the reason this verification is not made by the plaintiff, Letcher Spicer, is that the said Letcher Spicer is mentally incompetent and that this affiant is his statutory guardian.

SAM SPICER.

Subscribed and sworn to before me by Sam Spicer this the 11th day of August, 1932.

[SEAL.] J. L. STIDHAM,
*Notary Public Breathitt County, Kentucky.*

Notary Public Breathitt County, Ky.
My commission expires Feb. 13, 1933.

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Office Supreme Court, U.
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SEP 21 1932
CHARLES ELMORE CROP
CLERK

No. 388

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1932.

---

LETCHER SPICER BY SAM SPICER, Guardian and Committee, - - - - - - - - - Petitioner,

*versus*

J. BRYAN SMITH, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company, - - - - - - - - Respondent.

---

## SUPPORTING BRIEF OF PETITIONER FILED WITH PETITION FOR WRIT OF CERTIORARI.

---

O. H. POLLARD,
WM. MARSHALL BULLITT,
LEO T. WOLFORD,
*Counsel for Petitioner.*

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1932.

---

LETCHER SPICER BY SAM SPICER, GUARDIAN AND COMMITTEE, - - - - - - *Petitioner,*

*v.*

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY, - - - - - - - - *Respondent.*

---

## SUPPORTING BRIEF OF PETITIONER FILED WITH PETITION FOR WRIT OF CERTIORARI.

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In support of the petition for writ of *certiorari*, we respectfully submit the following brief and statement of the laws and statutes of the United States sustaining our contention.

### STATUTES RELIED ON.

(a) Revised Statutes of the United States, Section 3466, provides:

> "Sec. 3466. **Priority of Debts Due United States Established.**

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

(b) Act of Congress, World War Veterans Act, 1924, approved June 7, 1924, states the purpose of the Act as follows:

"Section 300. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and to the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection for themselves and their dependents, the United States upon application to the Bureau and without medical examination, shall grant insurance * * * against the death or total permanent disability of any such persons * * *"

43 Stat., Sec. 300, page 624.

This purpose reaffirmed and restated in the Act of March 4, 1925.

43 Stat. 1308 (38 U. S. C. A., Sec. 511).

(c) "The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation."

43 Stat. 613 (38 U. S. C. A., Sec. 454).

(d) Director of Veterans Bureau is charged with the duty to see that compensation paid to the Guardian of an incompetent veteran is properly accounted for.

43 Stat. 608 (38 U. S. C. A. 426).

(e) "Director in his discretion may suspend payments to any Guardian or other person who shall neglect or refuse to render an account to the Director from time to time showing the application of such payments for the incompetent *beneficiary.*" (Our italics.)

43 Stat. 613 (38 U. S. C. A. 450).

(f) Guardian who shall embezzle money paid under War Risk Act or fraudulently convert same to his own use may be prosecuted and convicted in the Federal Courts. His punishment is fixed at fine not exceeding $2,000.00 or imprisonment at hard labor for a term not exceeding five years.

43 Stat. 1312 (38 U. S. C. A., Sec. 556).

Under provisions of the foregoing statutes of the United States, War Risk Insurance and Adjusted

Compensation paid by the United States to the Guardian of an incompetent is subject to the control of the United States until it reaches the beneficiary; in such cases the money belongs to the United States and the Guardian is the agency through which the money reaches the incompetent veteran and under the provision of Sec. 3466, Revised Stat. of U. S., said funds are entitled to a priority over the common creditors of the insolvent bank.

**Diverse Opinions of State Courts in Construing These Statutes.**

The Supreme Courts of the States of Nebraska, Missouri, Iowa, Minnesota and Virginia each hold that money paid by the United States Government to the Guardian of an incompetent or to his administrator as War Risk Insurance and Adjusted Compensation is the money of the United States until it reaches the beneficiary. As money of the United States it is entitled to priority of payment by virtue of the Statutes of the United States (Revised Stats. of the U. S., Sec. 3466). The Guardian is the channel created by the Congress of the United States through which this money is to reach the incompetent veteran. It cannot be diverted from that channel.

NEBRASKA:

*State* v. *1st State Bank Pawnee City,* 121 Neb. 521; *State v. Security Bank of Creighton,* 121 Neb. 515.

MISSOURI:

*Butler* v. *Cantley,* 47 S. W. (2d) 258.

MINNESOTA:

*Anderson* v. *Olivia State Bank,* 243 N. W. 398.

IOWA:

Pension money which has been paid to the Guardian of an incompetent is still in the process of transmission to him. The Guardian does not receive the money as agent for the incompetent, but as agent for the Government, and the money is still under the control of the Federal Government. *Manning* v. *Spry,* 121 Ia. 191. The Court said:

> "While in the Guardian's hands, he is a mere trustee or depository for the Federal Government, and the fund, no matter what its form, is not subject to taxation" (*Id.*).

VIRGINIA:

In *United States Veterans Bureau* v. *Thomas,* 156 Va. 902, the Court said that the Federal Government adopted the State courts as a means whereby the compensation of the veterans was administered, but that the Federal Government, having put up the money and intentionally retained control of it, was sufficiently interested, as required by statute, to appear and ask for the removal of incompetent veteran's committee.

KENTUCKY:

The opinion of the Court of Appeals of Kentucky in the instant case, 244 Ky. 68, is in direct conflict with the opinions of the Supreme Courts of the five States cited above. In the opinion, 244 Ky. 68, at 69, the Court says:

> "A careful examination of the statutes of the United States fails to reveal any express provision authorizing the preference given to this claim, and none has been pointed out * * * Furthermore, we find nothing in the Acts of Congress relating to adjusted compensation and War Risk Insurance from which to draw a reasonable inference that such preference is warranted or was intended. There are, however, a number of cases from Courts of other states that are in agreement with the Chancellor's finding." (Authorities cited.)
>
> "Some of these cases are cited in brief for appellee, and no doubt were relied on and had a determining effect in the Court below. But in none of them is it claimed that either the adjusted compensation or War Risk Insurance Acts expressly give preference or priority to funds held by fiduciaries for incompetent soldiers."

It will be observed that the opinion rests upon the fact that the World War Veterans Act fails to declare in *express terms* a preference or priority in favor of the incompetent for money on deposit to the credit of his Guardian in a bank at the time it becomes insolvent. The fact remains, however, that Federal

Statutes were enacted and have a material bearing on this question. Section 22, Act of Congress, June 7, 1924, 43 Stats. 613 (38 U. S. C. A., Sec. 454), *expressly* provides that the Compensation, Insurance and Maintenance and Support allowance shall not be subject to the claims of creditors of any person to whom the award is made. Certainly Congress never intended that money which is expressly exempted from the debts of the incompetent veteran should be applied to the payment of debts of other persons, which is the effect of the ruling of the Court of Appeals of Kentucky in holding that this money may be distributed pro rata among the creditors of the insolvent bank, thereby violating the spirit and the letter of the Congressional Act.

The War Risk Insurance was never provided for the benefit of creditors or that creditors should benefit by it. It was certainly not intended that creditors of a third party, in this case, the depositors in the Hargis Bank and Trust Company, should benefit from the fund.

## SUMMARY.

The Act specifically provides:

(1) Federal control over such money while in the hands of the Guardian of an incompetent veteran, 43 Stat. 608 (38 U. S. C. A., Sec. 426). (2) The Federal Disability Compensation is not assignable, is not subject to claims of creditors and is not subject to taxation, 43 Stat. 613 (38 U. S. C. A., Sec. 454). (3) In

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# Supreme Court of the United States

October Term, 1932. No. 388.

LETCHER SPICER, by Sam Spicer, Guardian and Committee, - - - - - - - - - Petitioner,

vs.

J. BRYAN SMITH, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company.

*On Writ of Certiorari to the Court of Appeals of Kentucky.*

## BRIEF FOR THE PETITIONER.

The Guardian of an incompetent World War veteran collected, and deposited in Bank, the veteran's war risk insurance and disability compensation. The Bank became insolvent, closed its doors, and the State Banking Commissioner liquidated it.

The Guardian has a prior lien on all the Bank's assets to secure the deposit (R. S. 3466; World War Veterans' Act).

WM. MARSHALL BULLITT,
O. H. POLLARD,
LEO T. WOLFORD,
*Counsel for Petitioner.*

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

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**SECOND POINT: The Bank was insolvent in the bankruptcy sense.**

**When it closed its doors, refused to pay its depositors, and was taken over by the Banking Commissioner for liquidation, it committed an "act of bankruptcy" within the meaning of R. S. §3466, so that the United States is entitled to a preference in the repayment to it of the guardian's deposit in the bank** . . 29–31

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**THIRD POINT: Irrespective of R. S. §3466, the World War Veterans Act does not permit any war risk insurance or disability compensation held by the guardian of an incompetent veteran to be subjected to the claims either of the veteran's creditors, of or the creditors of any bank in which the guardian has deposited such money** .....32–36

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[References required by Rules 12 and 27.]

*Opinion below.* *Smith, Special Deputy*, etc., v. *Spicer's Guardian*, 244 Ky. 68 (R. 12).

*Jurisdictional Authority.* A writ of *certiorari* granted October 24, 1932 (R. 19; —— U. S. ——), pursuant to Act. February 13, 1925, C. 229 §1, 43 Stat. 937; Jud. Code, 237 (b); 28 U. S. C. A. §344.

*Statute of United States involved*, R. S. 3466; 31 U. S. C. A. §191 (*Cf. U. S.* v. *Oklahoma*, 261 U. S. 253, 259).

*Date of Judgment, etc.*, May 10, 1932 (R. 12); rehearing denied June 21, 1932 (R. 18); petition for *certiorari* filed September 21, 1932; petition granted October 24, 1932 (R. 19).

*Nature of the Case, rulings, etc.* Petitioner as Guardian of a mentally incompetent World War Veteran deposited his ward's War Risk Insurance money and Disability Compensation in a Bank, which later closed its doors because insolvent, and was taken charge of by the State Banking Commissioner for liquidation. Petitioner claims a preferance both under (1) R. S. 3466 and (2) 43 Stat. 613, 38 U. S. C. A. §450, 454, as against all other depositors. The Court of Appeals of Kentucky *denied* the preference so claimed (R. 12-17).

# Supreme Court of the United States

**October Term, 1932. No. 388.**

---

LETCHER SPICER, BY SAM SPICER, GUARDIAN AND COMMITTEE, - - - - - - - - - - *Petitioner,*

*v.*

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY.

---

*On Writ of Certiorari to the Court of Appeals of Kentucky.*

---

## BRIEF FOR PETITIONER.

---

The question involved here is whether (under R. S. §3466 and the "World War Veterans' Act, 1924," §§21, 22 (43 Stat. 607, 613; 38 U. S. C. A., §§450, 454) the Guardian,* of an incompetent World War Veteran, who deposited his ward's funds (derived from War Risk Insurance and Disability Compensation) in a State Bank, is entitled to a

*In Kentucky, the person having the official statutory care of the estate of a mental incompetent is called a "Committee" (Ky. Stat., §2149); but his powers and duties are defined to be "the same as those of the guardian of an infant" (§2153). For convenience, the Petitioner will be called "Guardian," although he is technically described in this record as both Guardian and Committee (R. 1, 12).

preference over all ordinary depositors and creditors of the Bank, when the Bank closed its doors because insolvent, and its affairs were taken over by the State Banking Commissioner for liquidation.

The lower State Court decided that the Guardian had a preferred claim, prior to all others, against the assets of the Bank in the hands of the Banking Commissioner (R. 10).

The Court of Appeals of Kentucky *reversed* that decision, and held that the United States parted with all possession and control of the money when it was paid over to the Guardian; and that, hence, the indebtedness of the Bank to the Guardian was a mere unsecured debt, wholly controlled by the laws of Kentucky with respect to preference and priority; and that, under the Kentucky laws, the Guardian was not entitled to any preferential lien for the deposit (R. 12-17).

The Guardian contends (1) that the money in question remains United States funds while in his hands and until it passes into the actual physical possession and control of the Veteran himself, and that until such time the United States is entitled to a preference under R. S. §3466; and, (2) that as the World War Veterans' Act exempts such funds, even in the hands of the Veteran himself, from the claims of his creditors, *a fortiori*, the ordinary general creditors of the Bank can not, in effect, subject such money to a *pro rata* payment of their own claims against the insolvent Bank.

The Banking Commissioner, on the other hand, contends that when the United States once paid the War Risk In-

surance money and the disability compensation to the Veteran's legally appointed Guardian, who deposited the funds in a State Bank, the ordinary relation of debtor and creditor arose between the Bank and the Guardian, that the rights and priorities between the Bank and the Guardian depositor must be determined by the laws of Kentucky under which the Bank operated and was liquidated; and that, therefore, no such preference as the Guardian claims, exists.

## STATEMENT OF THE CASE.

Letcher Spicer is a World War Veteran, who completely and permanently lost his mind and is confined in the United States Veterans' Hospital at Chillicothe, Ohio (R. 1-2).

Spicer had $10,000 War Risk Insurance payable in case of "total permanent disability," in monthly installments of $57.50 (R. 4); and, in addition, was entitled to certain Disability Compensation for total permanent disability contracted in the line of duty (40 Stat., c. 105, §§300, 302, pp. 405, 406).

On September 29, 1919, the petitioner, Sam Spicer, was duly appointed Guardian for the incompetent (R. 2).

For ten years, from January 1, 1920, to February 5, 1930, the Guardian collected and deposited in a Bank at Jackson, Kentucky, all the moneys which, as such Guardian, he received from the United States as War Risk Insurance and Disability Compensation for his ward (R. 2-3). The Guardian had demanded payment of the deposit

before the Bank closed its doors, but the Bank refused to pay the deposit (R. 3).

On February 6, 1930, the Bank voluntarily closed its doors (R. 2), at which time it owed to depositors and other creditors $800,000, of which $200,000 was a secured debt owing to Cincinnati and Louisville banks.

There was not over $300,000 all told (including excess collateral on the bank loans) available to pay the remaining $600,000 unsecured depositors, so that the Bank could not possibly pay more than 50% and "probably *much less* than 50%" to the depositors (R. 6, 7). Thereupon, the Banking Commissioner took possession of the Bank, and after some difficulty sustained his right to liquidate the Bank (*Com.* v. *Hargis Bank & Trust Co.*, 233 Ky. 801). When the Bank closed its doors on February 5, 1930, the Guardian had on deposit there $6,070.80, of which about half was from War Risk Insurance and the other half from Disability Compensation (R. 2, 3, 8).

The Guardian filed this suit in the Breathitt Circuit Court against the Banking Commissioner, seeking to recover $6,070.80, with 5% interest to January 1, 1930, as a preferred claim against all the assets of the Bank in the hands of the Banking Commissioner, upon the ground that it was a debt due to the United States, entitled to a preference under R. S. 3466 and under the World War Veterans' Act (R. 1-3).

The Banking Commissioner defended upon the ground that the Guardian was a mere, ordinary depositor, "only entitled to share ratably with the other depositors and creditors of this bank" (R. 7).

The lower court decided that the Guardian was entitled to recover the deposit as a preferred claim against the assets in the hands of the Banking Commissioner (R. 10).

The Court of Appeals *reversed* the case, upon the ground that when the United States paid the money to the Guardian, such payment was a complete and final discharge of the Government's liability to the soldier; that the funds were no longer moneys of the United States, but were moneys of the veteran, held for his benefit by his Guardian; that neither the Guardian nor the Bank were "*indebted* to the United States" in the sense of R. S. §3466; and that, consequently, the Guardian was not entitled to any lien or preference in the distribution of the insolvent Bank's assets (R. 12-17).

This Court granted a writ of *certiorari* (R. 19), presumably because of the conflict on that subject, between the Kentucky and Connecticut decisions (*Shippee, Bank Commr.,* v. *Commercial Trust Co.,* 161 Atl. 775, not yet officially reported) on the one hand, and the contrary decisions in Nebraska (*State* v. *First State Bank,* 121 Neb. 521), Missouri (*Butler* v. *Cantley,* 47 S. W. (2d) 258, not yet reported officially), Minnesota (*Anderson* v. *Olivia State Bank,* 243 N. W. 398, not yet reported officially), Illinois (*Nelson, Auditor,* v. *Colegrove & Co.,* Ill. App. Court, August 18, 1932, No. 8616, not reported officially), and Ohio (*Ramisch* v. *Fulton,* 180 N. E. 735, not reported officially); *Cf.* also Iowa (*Manning* v. *Spry,* 121 Ia. 191), and Virginia (*United States Veterans Bureau* v. *Thomas,* 156 Va. 902).

We insist:

1. The deposit was a "debt due to the United States," entitled to priority under R. S. §3466.

2. War Risk Insurance and Disability Compensation when deposited in Bank by a veteran's statutory guardian, is a sacred trust fund of United States' money impressed with an equitable lien, and not only exempted from seizure by the veteran's creditors, but also entitled to priority of payment before other creditors of the Bank.

It will be helpful to make a short

**Review of the United States' Right of Priority Under R. S. §3466.**

1. At common law, by sovereign prerogative the Crown had a priority in the payment of public debts over private creditors (*Rex* v. *Wells,* 16 East 278; *U. S.* v. *State Bank of N. C.,* 6 Pet. 29, 35; *U. S.* v. *Canal Bank,* 25 Fed. Cas. 277, 278); but the United States has no such prerogative, as there is no common law of the United States (*Id.: Price* v. *U. S.,* 269 U. S. 492, 499, 500; *Spokane County* v. *U. S.,* 279 U. S. 80, 92).

2. To remedy that situation, at the first session of the first Congress, the Act of July 31, 1789, c. 5, §21 (1 Stat. 42) was adopted, giving the United States priority in payment of certain debts in cases of insolvency; which was successively broadened by four Acts (1790-1798) cited in the margin,* so as to cover every kind of indebtedness due to the Government in cases of insolvency, absconding debtors, voluntary assignments, and acts of bankruptcy; culminating in the Act of March 2, 1799, c. 22, §65, 1 Stat.

*Act of Aug. 4, 1790, c. 35, §45, 1 Stat. 169; Act of May 2, 1792, c. 27, §18, 1 Stat. 263; Act of March 3, 1797, c. 20, §5, 1 Stat. 515; Act of July 11, 1798, c. 71, §15, 1 Stat. 594.

676, which continued in force for 75 years, until its re-enactment (with trifling changes designed to broaden its application) on December 1, 1873, as §3466, Rev. Stats., which is still in force.

§3466 appears as the first section of Title XXXVI of the Revised Statutes, entitled "DEBTS DUE BY OR TO THE UNITED STATES" as follows (31 U. S. C. A., §191):

> "Whenever any person indebted to the United States *is insolvent,* or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, *the debts due to the United States shall be first satisfied;* and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a *voluntary assignment* thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an *act of bankruptcy* is committed."

3. Although the earlier acts used the phrase "in which an act of legal bankruptcy shall have been committed," it is very important to note that there was no national bankruptcy act in existence for over 90 years out of our 144 years of national life;* that the Acts of 1792, 1797 and

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*The several Bankruptcy Acts were respectively in force as follows:

| | |
|---|---|
| Act April 4, 1800 (2 Stat. 19; repealed Dec. 19, 1803, 2 Stat. 248) | 3 yrs. |
| Act Aug. 19, 1841 (5 Stat. 440; repealed March 3, 1843, 5 Stat. 614) | 2 yrs. |
| Act March 2, 1867 (14 Stat. 517; repealed September 1, 1878, 20 Stat. 99) | 11 yrs. |
| Act July 1, 1898 (30 Stat. 544) | 27 yrs. |
| Bankruptcy Acts in force | 43 yrs. |

1799 were all passed *before* the adoption of any national bankruptcy act whatever; that there was no national bankruptcy act in existence for 63 years out of the 75 years of life of the Act of 1799; and that R. S., §3466, was also in force for nearly 20 years when there was no national bankruptcy act.

Therefore, the term "act of bankruptcy" as used in R. S. §3466 and the various priority statutes, was not limited exclusively to those *technical* "acts of bankruptcy" as variously defined, from time to time, in the different national Bankruptcy Acts; but it must be given a broader meaning, embracing, (1) various situations which arose when there was no national Bankruptcy Act in force, but which Congress had in mind as constituting "acts of bankruptcy" in the broader and more general sense; and, of course, (2) any technical "act of bankruptcy" as defined in any of the various Bankruptcy Acts.

The *priority* statutes were in force for nearly 100 years when there was *no* Bankruptcy Act in existence and when there could not be any adjudication in bankruptcy. Therefore, it is not a condition precedent that there should be any actual bankruptcy proceedings pending, in order to give the United States a priority on account of the commission of some "act of bankruptcy."

In other words, there are circumstances when the United States is entitled to its priority of payment upon the commission of an "act of bankruptcy," even though there is no actual Bankruptcy proceeding brought, or even Bankruptcy Act in force.

The exact meaning of the phrase "act of bankruptcy" as used in the priority statute, has never been fully defined by this Court.*

**The Supreme Court's Construction of R. S. §3466.**

Bearing these general considerations in mind, it may be said that the Act has been authoritatively construed by this Court in the following particulars:

I. The debtor's insolvency must be such that *all* his property will not be sufficient to pay *all* his debts (*U. S.* v. *Oklahoma*, 261 U. S. 253, 260, and cases there cited); but even such insolvency, *taken alone*, will *not* give to the United States a priority of payment (*Id.*). The insolvency must be *manifested* in one of the three modes pointed out in the latter part of the statute, which defines or explains the *meaning* of the insolvency referred to in the earlier part of the statute (*Id.*).

II. The Bankruptcy Act of 1867 reaffirmed the Act of 1797 (now §3466); and both acts made the same provision

*By reason of the fact that (1) the language of §3466 was thus adopted and crystallized before there was any national bankruptcy act defining an "act of bankruptcy" and subsequent acts have adopted varying definitions thereof, and (2) §3466 has been equally in force whether there were or were not any national bankruptcy acts in existence, and regardless of what their particular terms were, some confusion has arisen, and different parts of §3466 have overlapped; as, for example, for over 100 years a "voluntary assignment" was not an "act of bankruptcy" even under the short-lived National Bankruptcy Acts of 1800, 1841 or 1867; and it first became an "act of bankruptcy" under the Act of 1898 when it was called "a general assignment for the benefit of his creditors."

with respect to the priority of payment of "all debts due to the United States" (14 Stat. 531; *Lewis Trustee* v. *U. S.*, 92 U. S. 618; *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, 158).

The Act of 1867 expressly defined as one of the "acts of bankruptcy":

> "That any person * * * who, being a banker * * * has fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days, shall be deemed to have committed an act of bankruptcy" (14 Stat. 536, §39).*

III. The Bankruptcy Act of 1898 modified the provisions of R. S. §3466 with respect to the extent of the Government's priority of payment in bankruptcy cases where wages were given priority of payment over *ordinary* Government debts (*Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, 158); but the Government's claims for taxes have priority even over wages (*Oliver* v. *U. S.*, 268 U. S. 1); and in bankruptcy cases the United States' priority is limited to taxes only (*Davis* v. *Pringle*, 268 U. S. 315; *Price* v. *U. S.*, 269 U. S. 492, 499, 500; *Spokane County* v. *U. S.*, 279 U. S. 80, 92).

IV. By the 1926 Amendment to the Bankruptcy Act of 1898, it was expressly provided† that—

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*It was "an act of bankruptcy" when the bank suspended payment, even *without fraud*, if it did not resume payment within fourteen days (16 Am. & Eng. Encyl. of Law, 2d Ed. 672, Note 1).

†Apparently adopted to avoid the result of *U. S.* v. *Oklahoma*, 261 U. S. 253 (see *Standard Acc. Ins. Co.* v. *E. T. Sheftall & Co.*, 53 Fed. (2d) 40, 41).

> "*Acts of bankruptcy* by a person shall consist of * * * *while insolvent,* a receiver or trustee has been appointed, or *put in charge of his property*" (44 Stat. Pt. 2, p. 662; 11 U. S. C. A., §21).

The law is pretty well settled as to the United States' right to priority in the distribution of assets in *actual bankruptcy cases,* but the law has *not* been fully settled by this Court in the settlement of insolvent estates *outside of* the bankrupt courts.

In the case at bar, the Bank [Hargis Bank & Trust Company] was hopelessly insolvent in the strict *bankruptcy* "sense."

**Contentions of the Parties.**

The opposing contentions may be thus summarized:

1. The Guardian claims that R. S. §3466 has come into play, because the Bank committed "an act of bankruptcy" (1) in the technical sense as defined by the Amendment of 1926; (2) in the secondary sense as once expressly defined in the Bankruptcy Act of 1867; and (3) in the general sense that any bank that permanently closes its doors and refuses to pay its depositors has committed "an act of bankruptcy" within the meaning of R. S. §3466.

2. The Guardian contends that the money paid to him by the United States on account of the veteran's War Risk Insurance and Disability Compensation, is still the money of the United States which he as Guardian is merely holding for its account until it shall have been applied to the actual benefit of the veteran; and, hence, upon its deposit

in the Bank, such Bank became "indebted to the United States" within R. S. §3466.

3. The Guardian contends that, independently of any construction that may be given to R. S. §3466, the true meaning of the World War Veterans' Act is that money paid by the United States thereunder, shall not, under any circumstances, be subject to the claims of the creditors of the veteran; and that *a fortiori*, such money cannot be applied to satisfy *pro tanto* the claims of creditors of the Bank; but that such money was impressed with an equitable lien in favor of the United States when it was deposited in the Bank; and that the Bank, and all its creditors, are affected with notice that such a deposit by an incompetent veteran's Guardian is impressed with such equitable lien in favor of the United States to secure, at all events, the payment of the money to the veteran, without the interference of creditors, tax claims, or any other hazard.

4. The Banking Commissioner contends that when the United States paid the War Risk Insurance and Disability Compensation to the Guardian and he deposited it in Bank, it was not a deposit of the United States' money; but that the United States had parted with all title, possession and control of the money by paying it to the Guardian, and the Government was thereby released and discharged of all liability to the veteran; and that the deposit was due to the estate of the veteran, and, as such, is controlled solely by the laws of Kentucky with respect to the preference or priority of deposits.

SUMMARY OF POINTS DISCUSSED.

1. War risk insurance and disability compensation paid by the United States to the guardian of an incompetent veteran, remain the money of the United States so long as it is in the guardian's hands or subject to his control, as the guardian is a mere instrumentality of the United States for the disbursement of such money for the veteran's benefit.

The guardian's deposit of such money in a bank is a deposit of United States money, so that the bank is "indebted to the United States" therefor. (*Infra* 14–28.)

2. The bank was insolvent in the bankruptcy sense; and when it closed its doors, refused to pay its depositors, and was taken over by the Banking Commissioner for liquidation, it committed "an act of bankruptcy" within the meaning of R. S. §3466, so that the United States is entitled to a preference in the repayment to it of the guardian's deposit in the bank. (*Infra* 29–31.)

3. Irrespective of R. S. §3466, the World War Veterans' Act does not permit any war risk insurance or disability compensation held by the guardian of an incompetent veteran to be subjected to the claims either of the veteran's creditors, or of the creditors of any bank in which the guardian has deposited such money. (*Infra* 32–36.)

## FIRST POINT.

**War risk insurance and disability compensation paid by the United States to the guardian of an incompetent veteran, remain the money of the United States so long as it is in the guardian's hands or subject to his control, as the guardian is a mere instrumentality of the United States for the disbursement of such money for the veteran's benefit.**

**The guardian's deposit of such money in a bank is a deposit of United States Money, so that the bank is "indebted to the United States" therefor.**

Spicer had $10,000 War Risk Insurance and was totally and permanently disabled in the line of service (R. 2, 4).

By the War Risk Insurance Act of October 6, 1917 (40 Stat., c. 105, p. 398, *et seq.*), and the World War Veterans' Act, 1924 (43 Stat., c. 320, p. 607), it was provided that (1) if the veteran had taken the War Risk Insurance therein authorized, he should receive, in the case of total and permanent disability incurred in the line of duty, the amount of the insurance taken, payable in monthly installments; and (2) if he became totally and permanently disabled while in the line of service, he should receive certain sums as Disability Compensation.

Money paid, as here, by the United States, under the above Acts, on account of an incompetent veteran, is subject to the following special provisions:

The World War Veterans' Act, 1924 (43 Stat. 607, 613, 614; 38 U. S. C. A., §§421, 450, 451, 454), provides as follows:

"Sec. 21. That where any payment under this Act is to be made to * * * a person *mentally incompetent* * * * such payment may be made to the person who is constituted guardian * * * by the laws of the State or residence of claimant, or is otherwise legally vested with responsibility or care of the claimant or his estate * * *. *And provided further,* That the director, in his discretion, may suspend such payments to any such guardian * * * who shall neglect or refuse, after reasonable notice, to render an account to the director from time to time showing the application of such payments for the benefit of such minor or incompetent beneficiary.

"Sec. 22. That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, *shall not be assignable;** *shall not be subject to the claims of creditors* of any person to whom an award is made under Titles II, III, or IV; and shall be *exempt from all taxation: Provided,* That such compensation, insurance, and maintenance and support allowance shall be *subject to any claims which the United States may have,* under Titles II, III, IV, and V against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.

"Sec. 26. * * * That in cases where the estate of the decedent would escheat under the laws of the place of his residence, such instalments [*i. e.*, monthly instalments of compensation, yearly renewable term insurance, etc.] shall not be paid to the estate of the decedent, but *shall escheat to the United States* and

*By the War Risk Insurance Act of October 6, 1917, §402, under which Spicer originally received his War Risk Insurance policy, it was provided (40 Stat. 409):

"The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary."

shall be credited to the appropriation from which the original award was made."

Sec. 505 added by the Act of March 4, 1925 (43 Stat., c. 553, §20, p. 1312), makes embezzlement by a guardian a Federal offense, as follows:

> "Sec. 505. *Every guardian,* curator, conservator, committee or person legally vested with the responsibility or care of the claimant or his estate, having charge and custody in a fiduciary capacity of money paid, under the War Risk Insurance Act as amended, or under the World War Veterans Act, 1924, for the benefit of any minor or incompetent claimant, *who shall embezzle* the same in violation of his trust or fraudulently convert the same to his own use, *shall be punished* by fine not exceeding $2,000 or imprisonment at hard labor for a term not exceeding five years, or both." (38 U. S. C. A., §556.)

The Act of July 3, 1930, c. 849, §5, 46 Stat. 993; 38 U. S. C. A., §450, provides that in the event of the death of an incompetent veteran before receiving all of the War Risk Insurance or Disability Compensation to which he was entitled, or if, at his death, there are any such funds in the hands of his Guardian:

> "*Provided,* That payment will not be made to his personal representative if, under the law of the State of his last legal residence, his estate would escheat to the State; *provided further,* That any funds in the hands of a guardian, curator, conservator, or person legally vested with the care of the veteran or his estate, derived from compensation, automatic or term insurance payable under the War Risk Insurance Act as amended, or this chapter which, under the law of

> the State wherein the veteran had his last legal residence would escheat to the State, *shall escheat to the United States** and shall be returned by such guardian, curator, conservator, or person legally vested with the care of the veteran or his estate * * * to the bureau * * *."

The Act of July 3, 1930, c. 849, §21 (46 Stat. 1000; 38 U. S. C. A., §501a), provides:

> "That where an incompetent veteran receiving disability compensation under the provisions of this chapter disappears, the director, in his discretion, *may pay to the dependents* of such veteran the amount of compensation provided in §472 of this title for dependents of veterans."

By the foregoing statutory provisions, Congress clearly evidenced its intention that as to all moneys to be paid by it for the benefit of an incompetent veteran, such moneys should be

"*exempt* from all taxation,"
"should *not* be assignable,"
should "*not* be subject to the claims of creditors"; *but*
should *remain* "subject to any claims which the *United States* may have" against the veteran.

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*The Act of July 2, 1926, §3 (44 Stat. 792), provides with respect to unpaid instalments at the death of the veteran:

> "That in cases where the estate of the decedent would escheat under the laws of the place of his residence, such instalments shall not be paid to the estate of the decedent, but shall *escheat to the United States* and shall be credited to the appropriation from which the original award was made."

**And further:**

**That the United States might *discontinue* payments to the incompetent veteran guardian if it thought proper. That, in the event of the veteran's death, if under the laws of the state of his residence the funds paid or unpaid would escheat to the State, such laws should not prevail, but such funds should escheat to the *United States.***

The real effect of all these provisions is that the money paid to the Guardian of an incompetent veteran, *remains the money of the United States* and largely subject to its control and to its direction regarding its ultimate disposition.

If such is the true relation of the United States to the money, then when Spicer's Guardian deposited the money in the Bank, it was a deposit of *United States money,* so that the Bank thereby became indebted to the United States therefor.

By the Constitution (Art. 1, §8, Cl. 1, 11-18), Congress is given the power to collect taxes in order to provide for the common defense and general welfare of the United States, to declare war, raise and support armies and navies, regulate the land and naval forces, govern the militia, etc.

Under those comprehensive powers, Congress can appropriate money for pensions, bounties, etc., and attach thereto such conditions regarding the disbursement, preservation, control and application thereof, as it may seem necessary and proper, including the right to fix by law the time and manner in which the pension or bounty shall finally pass to the recipient (*U. S.* v. *Hall,* 98 U. S. 343, 355;

*Eckert & Co.* v. *McKee,* 9 Bush (Ky.), 355; *Kellogg* v. *Waite and Trustee,* 12 Allen (Mass.), 529, 530. For an illuminating discussion of the powers of Congress in connection with the appropriation of public money, with many historical illustrations, see Brief of CHARLES E. HUGHES, in *Smith* v. *Kansas City Title & Trust Co.,* 255 U. S. 180; on original hearing, pp. 23-27; and on rehearing, pp. 38-48).

Similarly, under the power to regulate commerce with the Indian Tribes (Art. 1, §8, Cl. 3), Congress has attached and enforced a variety of conditions connected with the property and funds of the Indians, upon the general theory that the United States can constitute itself, and such agencies as it may adopt, guardian of the Indians' property and interests, in order to protect (1) the Indians from the loss or misappropriation of their money and property, and (2) the money paid by the United States for the benefit of the Indians, from any hazard of loss, dissipation or misappropriation until it shall have been actually used or enjoyed by the Indian himself for his own benefit.

The close analogy between pensions, War Risk Insurance and Disability Compensation, held by a guardian for the benefit of a mentally incompetent veteran, and Indian property held by the United States or one of its Indian Agents, for the benefit of the Indians, is so close that it will be sufficient to cite one or two pension and Indian cases to show that money paid by the United States to such guardian remains the money of the United States, until finally expended for the veteran's benefit; and that, consequently, while such money remains on deposit in a Bank, the bank is "indebted to the United States" for the amount of the deposit.

**In *U. S.* v. *Hall*, 98 U. S. 343, Hall was the legal guardian under the laws of Ohio of an infant under 16 years of age. The infant was entitled to a certain pension. The United States paid the pension money to the local guardian who embezzled it. He was indicted under a Federal Statute. This Court held that Congress had the power to provide for the punishment of a State guardian who embezzled pension money which the United States paid to him for the use of his ward.**

The ground of the decision was that, as Congress had the power to grant pensions and bounties, it also had the power to (p. 351)

> "pass laws to protect the fund appropriated for such a beneficiary of the Government, certainly until it reaches his hands. Congress in many cases has passed such laws and provided that the money shall not be transferable or subject to attachment, levy, or seizure, even after it has been received by the agent, attorney, or guardian."

After reviewing various statutes designed to protect pensioners from the loss or improvident use of pension money, it was held that, even after the money was paid to the guardian, it still remained within the constitutional control of the United States, with power in Congress to punish the guardian, if he embezzled it, for the following reasons (p. 357):

> "1. Because the United States, as the donors of the pensions, may, through the legislative department of the government, annex such conditions to the donation as they see fit, to insure its transmission unimpaired to the beneficiary. 2. Because the guardian no

more than the agent or attorney of the pensioner is obliged by the laws of Congress to receive the fund; but if he does, he must accept it subject to the annexed conditions. 3. Because the word 'guardian,' as used in the acts of Congress, *is merely the designation of the person* to whom the money granted may be paid for the use and benefit of the pensioners. 4. Because the fund proceeds from the United States, and inasmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary, which is all that is necessary to decide in this case. 5. Because the elements of the offense defined by the act of Congress in question consist of the wrongful acts of the individual named in the indictment, wholly irrespective of the duties devolved upon him by the State law. 6. Because the theory of the defendant that the act of Congress augments, lessens, or makes any change in respect to the duties of a guardian under the State law is entirely erroneous, as the act of Congress merely provides that the pension may be paid to the person designated as guardian, for the use and benefit of the pensioner, and that the person who receives the pension, if he embezzles it or fraudulently converts it to his own use, shall be guilty of a misdemeanor, and be punished as therein provided."

In *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483 (S. C.), 295 Fed. 331 (D. C.), 299 Fed. 705 (C. C. A.), the Superintendent of an Indian Reservation deposited in Bank certain moneys received by him from the sale of tribal lands, Indian allotments, etc. It was held that the Bank was "indebted to the United States," because the United States is, in effect, the guardian of the Indians, and as such supervises and manages their affairs and collects and dis-

burses funds intended for their benefit. This Court said (269 U. S., at 487):

> "The lower courts rightly held that the amount owed by the bank on account of the deposit in question was a debt due to the United States."

The Circuit Court of Appeals, whose holding was thus approved, had said (299 Fed. 705):

> "Notwithstanding that the money on deposit with the bank stood in the name of the Indian agent and was held for the use and benefit of the Indians as their property, there can be no question but that it represented a debt due from the bank to the United States. This is recognized in the terms of the bond which was given to secure its payment, and it is the generally accepted doctrine as to all moneys held by officers of the United States in trust for the use and benefit of the Indians. The United States, under its treaty with the Klamath Indians, was the guardian of the Indians on the reservation. *United States* v. *Humason* (C. C.), 8 Fed. 71; *United States* v. *Fidelity Trust Co.*, 121 Fed. 766; *United States* v. *Comet Oil & Gas Co.* (C. C.), 187 Fed. 674; *United States* v. *Gray*, 201 Fed. 291; *Watson* v. *United States* (C. C. A.), 263 Fed. 700; *Central Nat. Bank of Tulsa* v. *United States* (C. C. A.), 283 Fed. 368; *United States* v. *State of Oklahoma*, 261 U. S. 253."

It was accordingly held in that case that, as the Bank was indebted to the United States, the latter had a prior lien on the Bank's assets under R. S., §3466.

The principle underlying both the *Hall* and *Bramwell* cases is that, where the United States has certain property or moneys which it desires to be applied for the benefit of

certain classes of people, whether pensioners or Indians, the *United States* is the real party in interest and can prescribe whatever terms it sees fit with respect to the title, control and disposition of its property and money, up to the time when the property and money has been actually received by the ultimate beneficiary. The consequence of this theory is that, in the meantime, *the property and money is the property and money of the United States,* the embezzlement of which it can punish, and for the security of which it can provide.

Therefore, when pension money is embezzled by a State guardian, it can be punished as the theft of United States money. When Indian money or pension money is deposited by the person charged with the duty of holding and applying it for the benefit of the beneficiary (whether such person is called "Indian agent" as to Indians, or "guardian" as to incompetent veterans), it is, in either case, *the money of the United States* which is being placed in the bank; the bank is "indebted to the United States" therefor, and the United States had the constitutional power to provide that it should have a prior lien upon the assets of the bank to secure the repayment to it of its money.

It should be borne in mind that there is no distinction between the position of the man appointed as Indian Agent by the United States, on the one hand, and the man, although appointed as guardian under the State law, who is selected by the United States as the agency or instrumentality for the holding and administration of the money of the United States to be applied for the benefit of the veteran. The guardian under a State law, who accepts

pension money, is just as much an agent or instrumentality of the United States with respect thereto, as is the person appointed by the United States as Indian Agent.

The fact that the guardian of an incompetent veteran holds his appointment under the probate court of a State, does not, in the slightest degree, lessen his allegiance or responsibility to the United States with respect to the money or property which the United States pays over to him for the use of his ward. In short, as a mere matter of administrative convenience, the United States selected the guardian under the probate court's appointment to carry out a Federal function, just as in 1917 the United States selected the election officers in the several States to carry out the provisions of the Draft Act. A person who, by virtue of having been an election officer under the State laws, was designated to carry out the Draft Act, was an instrumentality of the United States as fully and completely as if he had been initially so designated without ever having served as a State election officer.

In *U. S. Veterans' Bureau* v. *Thomas,* 156 Va. 902, it is said:

> "The Federal Government has adopted our State Courts as a means whereby the compensation of incompetent veterans of the World War may be administered and used for their benefit."

In accordance with the foregoing principles, the courts of numerous States have held, under a variety of circumstances, that when War Risk Insurance or Disability Compensation money was deposited in a bank by the veteran himself, or by a State guardian, or other fiduciary, the

bank was "indebted to the United States," which had a prior lien on the assets of the bank to secure the repayment of the deposit, for the benefit of the beneficiary.

REVIEW OF STATE COURT CASES.

In *State* v. *Security Bank*, 121 Neb. 515, a veteran died intestate, and his administratrix collected and deposited in the Security Bank the proceeds of the veteran's War Risk Insurance. The Bank failed. It was held that the money so paid by the United States as War Risk Insurance was not an asset of the estate; that the administratrix was a mere trustee to receive and pass on the funds to those entitled to them; and that

> "It is the money of the United States until it reaches the beneficiary, intended by the trust created. The Congress of the United States created a channel through which this money is to reach the dependents of the veteran. It must not be diverted from that channel. It cannot be so diverted. As money of the United States, it is entitled to priority by virtue of the Statutes of the United States."

It was held that under R. S., §3466, the Receiver of the failed bank was "indebted to the United States," which had a prior lien on the bank's assets for the amount of the deposit which the administratrix of the veteran had made therein.

In *State* v. *First State Bank*, 121 Neb. 521, a State Court appointed a guardian of a mentally incompetent World War veteran, who received from the Government both compensation and insurance, which he deposited in a State bank. The bank went into the hands of a receiver.

**It was held that the moneys so deposited were funds of the United States, and that under R. S., §3466, the guardian had a lien prior to the other depositors of the bank. The Court said:**

"The money is paid by the United States for the benefit of the disabled veteran or his beneficiary. The United States, for convenience, paid the money impressed with a trust provision to the guardian. Such guardian could not be required to accept money, but, if he accepted it, he took it subject to all the provisions imposed by statute. * * * We are of the opinion that the guardian in this case is the *instrumentality of the United States* for the purpose of paying the proceeds of War Risk Insurance to the beneficiary. *He is a mere trustee or depositary for the Government.* * * * Until the money is paid to the beneficiary, the obligation is not discharged. For convenience, in the case of an incompetent, the money is paid to the guardian. In such a case, the guardian is nothing more than an *agent of the Government* and the money in his hands is under its control and management. So long as the fund is subject to the control of the Federal Government, the State has no right to control it. Where War Risk Insurance is paid by the United States to the guardian of an incompetent, *the money belongs to the United States,* and is subject to its control until it reaches the beneficiary designated according to law. In such a case, the guardian is the agent for the Government and his authority over the fund is limited and controlled by Federal Statutes alone.

"Except as to $500, which it is stipulated was not proceeds of war risk insurance, the deposit represented funds of the United States, and as such is entitled to priority over claims of other deposits."

In *Butler* v. *Cantley*, 47 S. W. (2d) 258 (Mo.; not yet officially reported) a veteran died; his administrator collected over $5,000 from the United States Veterans' Bureau, as the proceeds of a War Risk Insurance Policy held by the veteran. The administrator deposited the money in a State bank, which subsequently closed, and was taken charge of by the State Commissioner of Finance. It was held that, under R. S., §3466, the administrator had a preferred claim, because it represented—

> "moneys belonging to the United States of America until it arrived in the hands of the intended beneficiaries of that fund, within the meaning of the statute disposing of that fund."

In *Anderson* v. *Olivia State Bank*, 243 N. W. 398 (Minn.; not yet officially reported) a World War Veteran was mentally incapacitated and totally and permanently disabled. A guardian was appointed for him, and deposited in a State Bank $1,354.08, partly from proceeds of War Risk Insurance and partly from proceeds of Disability Compensation. It was held that the guardian had a prior lien, both under the State and Federal statutes. The Court said:

> "Such funds do not vest in the ward until actually paid over to him, or until the funds are expended for his benefit. * * * The funds here involved belonged to the United States at the time the bank closed and remained such in the hands of the Commissioner of Banks."

In *Nelson, Auditor* v. *John B. Colegrove & Co.*, Ill. App. Ct. No. 8616 (decided August 18, 1932; not yet offi-

cially reported), a World War Veteran was permanently and totalled disabled. He had two minor children. Their mother was recognized [appointed] as their legal guardian by the Veterans' Bureau. She received from the Bureau various sums for the use of her wards as Compensation due them as minor children of a disabled veteran. She deposited the money in a State Bank, which became insolvent and went in the hands of a receiver.

Another veteran died, having a policy of War Risk Insurance. The State Court appointed a guardian for his minor brother, named as beneficiary for half of the insurance. The guardian received from time to time various sums of money, as the proceeds of the insurance, and deposited it in the State Bank which became insolvent.

It was held that, under R. S., §3466, the guardians had a preferred claim against the funds of the closed bank. The Court aptly said:

> "Payment of moneys to a guardian or conservator under this Act is not made to the guardian or conservator in his representative capacity as such, but as a representative of the Federal Government to whom he is required to account for his acts."

## SECOND POINT.

**The bank was insolvent in the bankruptcy sense.**

**When it closed its doors, refused to pay its depositors, and was taken over by the Banking Commissioner for liquidation, it committed "an act of bankruptcy" within the meaning of R. S. §3466, so that the United States is entitled under that statute to a preference in the repayment to it of the guardian's deposit in the bank.**

R. S., §3466, reads as follows:

> "Whenever any person indebted to the United States is *insolvent*, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an *act of bankruptcy* is committed."

1. The Bank was "insolvent" within the meaning of R. S., §3466; *i. e.*, all its assets were not enough to pay all its debts (R. 6, 7) (*United States* v. *Oklahoma*, 261 U. S. 253, 260).

2. When the Bank refused to pay its depositors, closed its doors and was taken over by the Banking Commissioner for liquidation (R. 3, 6, 7), and has never since reopened, *ipso facto* that constituted "an act of bankruptcy" within the meaning of R. S., §3466, because:

(1) By the May 27, 1926, Amendment to the Bankruptcy Act (44 Stat. 662; 11 U. S. C. A., §21) "*acts of bankruptcy* by a person" are expressly defined to arise when

> "while insolvent, a receiver or a trustee has been appointed, or put in charge of his property."*

(2) The Bankruptcy Act of March 2, 1867, provided that a person should "be deemed to have committed an *act of bankruptcy*"

> "who, being a banker, merchant, or trader, has fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days" (14 Stat. 517, 536, Section 39).†

(3) In the general sense (apart from technical statutory definitions), an *act of bankruptcy* is committed whenever a person refuses to pay his debts, closes his doors, and has his property taken over for liquidation by some public official.

We have shown under our First Point that the Bank was (*a*) "indebted to the United States"; and under this Second Point, we have shown that the Bank was both (*b*) insolvent and had (*c*) committed "an act of bankruptcy" within the meaning of R. S., §3466. Therefore, (*a*), (*b*)

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**Cf. Standard Acc. Ins. Co.* v. *E. S. Sheftall & Co.*, 53 F. (2d) 40, 41.

†That statute has been construed to mean that the act of bankruptcy exists when the banker, even *without fraud*, suspends payment and does not resume payment within 14 days (16 Am. & Eng. Enc. of Law, 2d Ed., p. 672, note 1). Even though the Bankruptcy Act of 1867 was subsequently repealed, its definition of what constitutes "an act of bankruptcy" remains pertinent in determining what acts fall within R. S., §3466, because, as pointed out at p. 7, *supra*, §3466 has been in force during nearly 90 years when there was *no* Bankruptcy Act in force.

and (*c*) co-existing, it automatically results that the United States is entitled by the express terms of R. S., §3466, to a priority in payment of the Spicer deposit before the other depositors of the bank are paid.

*United States* v. *Oklahoma,* 261 U. S. 253, is inapplicable. In that case, the United States, as guardian of incompetent Indians, caused certain Indian moneys to be deposited in a bank which was later taken over by the State Banking Commissioner. This Court held that the United States was not entitled to priority under R. S., §3466, because: (1) the bank, while insolvent under the Oklahoma law so as to justify its seizure by the Banking Commissioner, was *not* insolvent in the *bankruptcy sense* required by R. S., §3466, *i. e.*, "not having sufficient property to pay all his debts," (2) there was no "act of bankruptcy" committed, because the bank took no action whatever to place itself in the hands of the Banking Commissioner nor did it make a voluntary assignment of its property, and (3) the case arose *before* the May 27, 1926, Amendment to the Bankruptcy Act which definitely prescribed (apparently in view of the decision in *United States* v. *Oklahoma*) that an act of bankruptcy should be deemed to exist where "while insolvent a receiver or a trustee has been appointed or put in charge of his property."

## THIRD POINT.

**Irrespective of R. S. §3466, the World War Veterans' Act does not permit any war risk insurance or disability compensation held by the guardian of an incompetent veteran to be subjected to the claims either of the veteran's creditors, or of the creditors of any bank in which the guardian has deposited such money.**

By the World War Veterans' Act (p. 14 *et seq., supra*), Congress provided that any insurance, compensation, or other allowance which it made for an incompetent veteran (1) should not be assignable, should not be subject to claims of the veteran's creditors and should be exempt from taxation; but (2) should be subject only to any claim which the *United States* might have against the veteran; (3) that where the veteran's estate was about to escheat, any unpaid installments or money on hand should not go to the State, but should escheat to the *United States;* and (4) any guardian of an incompetent veteran who embezzled such insurance, compensation or allowance should be punished for a Federal offense.

Numerous state courts have construed the World War Veterans' Act to mean that Congress intended to hold control of the money until it reached the hands of the veteran himself; that under no circumstances should any creditor or other person be able to seize the money prior to the time that the veteran himself got it; that if prior to the time the veteran himself received it, the money should be held by any one, or deposited in a bank, it was in effect impressed with an equitable lien in favor of the United

States for the benefit of the veteran, of which every custodian or bank was affected with notice; and that consequently, where the guardian of an incompetent veteran or his minor children, deposited the proceeds of the veteran's war risk insurance, disability compensation, or other allowance in a bank which thereafter became insolvent and failed, such guardian could recover the deposit as a preferred claim ahead of all other depositors.

These decisions were not based upon the theory that the title to the money was still in the United States, so that the bank was indebted to the United States, and hence, R. S., §3466, gave a prior lien to the United States (see cases p. 25 *et seq., supra*), but they were based upon the broader and slightly different ground that when the United States paid the money to a guardian or other fiduciary, it was for the use and benefit of the veteran or his dependents, and was *impressed with an equitable lien* in favor of the veteran or his dependents to the end that all persons who came into possession or custody of the money, with knowledge of the source from which the money was derived, were affected with notice of such equitable lien. (See *U. S.* v. *Butterworth Judson Corp.*, 267 U. S. 387, 393, and cases cited.)

Therefore, when any bank received from the guardian of a veteran a deposit of War Risk Insurance or disability compensation money, the bank held it as a special trust fund impressed with an equitable lien in favor of the guardian; and in the event of the bank's insolvency, the guardian was entitled to recover the money in priority to other depositors.

Or, stated a little differently, the Government paid the money to the veterans' guardian with the condition attached that the money could not in any event be subjected to the taxing power of the State, to any levy by the veteran's creditors, nor be voluntarily assigned by the veteran himself or escheated to the State. In short, Congress provided that no circumstance should deprive the veteran of receiving the full benefit of the Congressional payment or bounty.

If such were the intent of Congress, *a fortiori,* Congress never intended that the deposit of such money in a bank should, in the event of the bank's insolvency, be used to pay, in whole or in part, other depositors or creditors of the bank.

In *Ramisch* v. *Fulton,* 180 N. E. 735 (Ohio; not yet officially reported) Ramisch deposited in an Ohio savings bank a check which he had received from the Veterans' Bureau as a loan on an adjusted service certificate. Some five weeks later, the bank failed and was taken over by the Superintendent of Banks. Although it is settled law in Ohio that the relation of a bank to a depositor is that of debtor and creditor, and not of bailee or trustee, the Court held that the bank was bound to know that the proceeds of such a bonus loan were exempt from seizure, and that Ramisch was entitled to recover the full amount of the deposit.

In *In re Fisher's Estate,* 302 Pa. 516, it was said with reference to the proceeds of War Risk Insurance:

> "The fund arising from war risk insurance is an earmarked fund that has impressed on it the quality given to it by the United States government, the qual-

> ity of a national donation, bounty, or gift for services in defense of the nation. The fund may be traced through the various agencies until it reaches its final destination in consummation of the original purpose for its creation. The badge of national obligation to a soldier protects it from liability for taxes, debts, and the like; * * * The fund is not part of the deceased soldier's estate as such, but is an earmarked fund, having certain special characteristics,"

In *Tama County* v. *Kepler*, 187 Iowa 34, a pensioner became insane, and the United States paid the pension money to his legal guardian. After his death, it was held that the County could not recover from the administrator the expense of the pensioner's maintenance at the County Poor House. The Court said:

> "In this case it appears that the insane person was under guardianship, and that the moneys or funds which the plaintiff seeks to subject to the payment of its claim were never delivered to the pensioner, but were paid over to his guardian, and, so far as appears, remained in his hands to the end of the pensioner's life. It is the settled law of the United States and of this State that the guardian in such case 'is nothing more than an agent for the Government, and that (pension) money in his hands is still under its control and management.'"

In *Payne* v. *Jordan*, 36 Ga. App. 787, the beneficiary of a War Risk Insurance policy received her monthly check and invested the proceeds in a house and lot. It was held that the house and lot thus purchased were not subject to execution. This carries the doctrine of equitable lien to the extreme limit.

In an earlier case of *Payne* v. *Jordan,* 152 Ga. 367, it was held that even after the proceeds of a War Risk Insurance policy were paid to the beneficiary who had deposited the same in a bank, they were not subject to garnishment.

In *In re Murphy's Committee,* 134 Misc. 683, it was held with respect to an incompetent veteran:

> "It seems unjust that the law should prevent the committee of an incompetent veteran from paying a person or agency, who or which, without the proper authorization of the committee, has furnished necessary support and maintenance to such veteran, but persons and agencies dealing with incompetent veterans are chargeable with the knowledge that the law jealously protects their allowances against their claims, and they must suffer the consequences."

## CONCLUSION.

Whether this case be considered from the standpoint of the money being that of the United States, to whom the Bank was indebted, and hence the United States has priority under R. S., §3466, or from the standpoint (regardless of R. S., §3466), that the various statutes governing World War Veterans' payments evidence an intention that no one can acquire any title to the money, except the veteran himself, and that the money is impressed with an equitable lien to that end—in either event, the result is the same. The Bank must, to the extent of its assets, pay the deposit back to the Guardian of Letcher Spicer.

The opinion and judgment of the Court of Appeals of Kentucky should be reversed, and the decision of the Breathitt Circuit Court should be approved.

WM. MARSHALL BULLITT,
O. H. POLLARD,
LEO T. WOLFORD,
*Counsel for Petitioner.*

January 17, 1933.

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OCT 8 1932

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1932

## No. 388

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LETCHER SPICER BY SAM SPICER, Guardian and Committee, - - - - - - - - - - Petitioner

versus

J. BRYAN SMITH, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company, - - - - - - - - Respondent.

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RESISTING BRIEF OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

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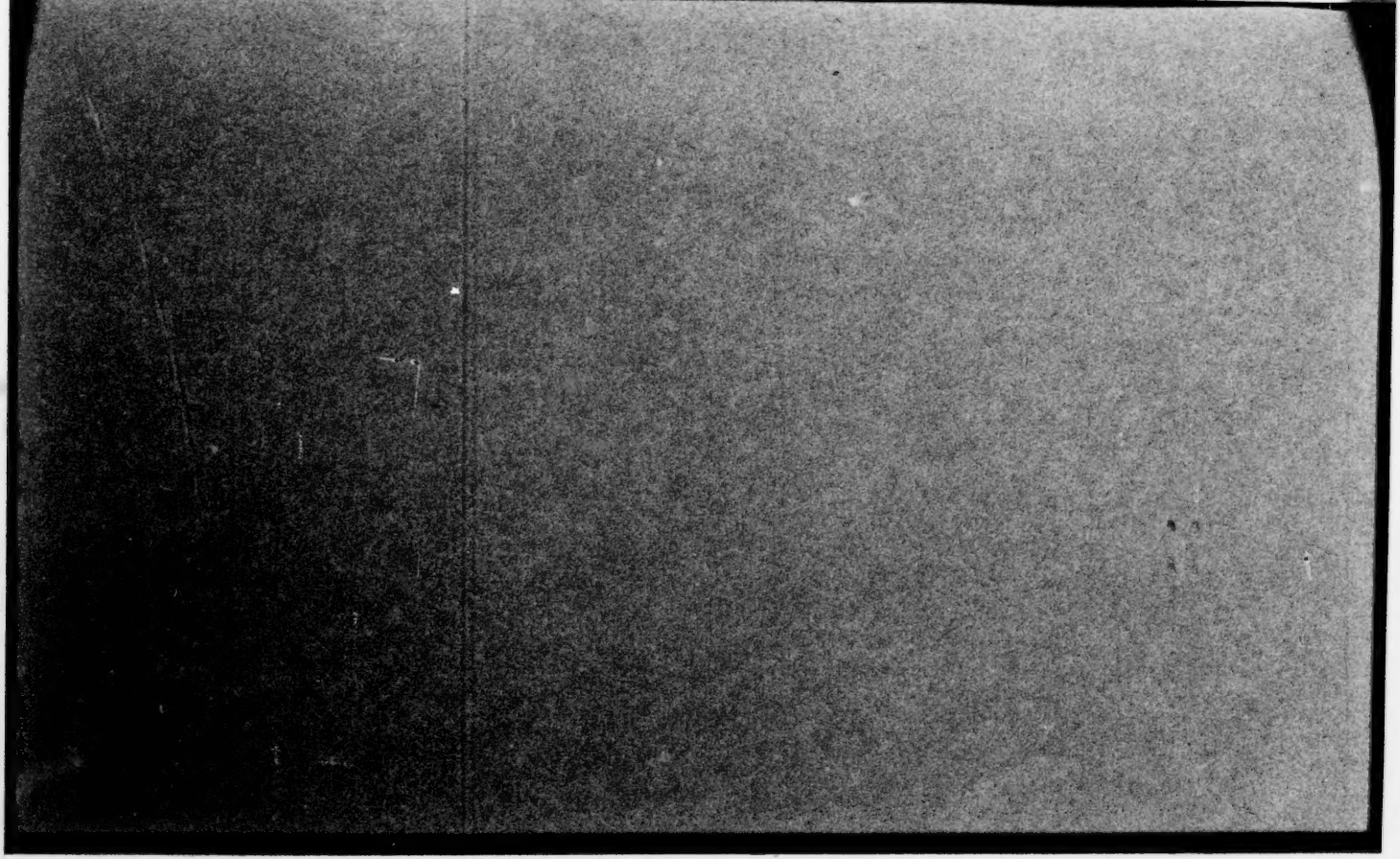
JESSE I. MILLER,
HENRY L. SPENCER,
Counsel for Respondent.



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## RESISTING BRIEF OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

In resisting the petition for writ of certiorari, we respectfully submit the following brief and statement. The chief contention is that the counsel for petitioner misconstrues the statute of the United States, that he cites for authority to sustain his claim for a preferred lien on the assets of the Hargis Bank and Trust Company in liquidation. We will deal with the various statutes cited by petitioner in the same order in which they are set out in his brief.

### STATUTES RELIED ON BY PETITIONER

(a) Revised statutes of the United States, Section 3466:

We contend that this statute, quoted by petitioner, has no application to the case at bar. It simply provides that whenever an insolvent is indebted to the United States, the indebtedness

due the United States shall have priority and preference over other indebtedness. The United States had no dealings with the Hargis Bank and Trust Company.

(b) 43 Statute Section 300; as quoted by petitioner:

Provides that every officer, enlisted man, and nurse, in the Army and Navy, may on application have war risk insurance. Another section of the war risk act provided that they would pay premiums for this insurance.

(c) 43 Stat. 613 (38 U. S. C. A. Sec. 454) quoted by petitioner,

Provides that insurance:

1st. Shall not be assignable.

2nd. Shall not be subject to the claims of creditors of any person to whom an award is made.

The learned counsel for petitioner places a strange construction on this section of the statute. Does it mean that the claim before the money is paid is not assignable, or does it mean, as petitioner contends, that the money after it is paid cannot be assigned or passed on, or I may say, spent?

Does the second mean that the award before it is paid is not subject to the claims of creditors? Or does it mean as petitioner contends, that after being paid the soldier could not pay his debts with it?

(d) 43 Stat. 608, (38 U. S. C. A. 426), is erroneously construed by the counsel for petitioner.

He says on page three of his brief as follows:

"Director of Veterans Bureau is charged with the duty to see that compensation paid to the guardian of an incompetent Veteran is properly accounted for."

We have read and re-read this section of the statutes, and are unable to find any language contained therein that justifies the broad assertion of the learned counsel of petitioner, as set out above. The words, guardian, curator, or committee will not be found in that section. It also does not mention any accounting for compensation by guardians, curators or committees.

This section deals exclusively with the powers of the directors and his employees and gives to him the power to make rules, and regulations for proof and evidence, forms of applications, investigations, medical examinations and adjudications and awards. All of its provisions are for the purpose of allowing the director to determine the procedure for application and award of War Risk Insurance.

(e) 43 Stat. 613 (38 U. S. C. A.), as quoted by petitioner.

This section simply provides that the director may suspend payments of insurance installments to any guardian who may neglect or refuse to render an account to him. This simply is to the effect that the government is interested in seeing that the money paid is properly used for the benefit of the veteran. It is certainly not inferable from the language of that section that the government retain a lien on the money paid to the guardian, or committee.

(f) 43 Stat. 1312 (38 U. S. C. A. Sec. 556,) as quoted by petitioner, simply makes it a crime against the United States for a guardian or committee who has received war risk insurance money for a veteran, if he embezzles it or steals it.

The learned counsel for petitioner after quoting all the above sections, by his own course of reasoning, concludes that the United States holds control of war risk insurance money paid to a guardian or committee until it is actually spent for the veteran. We contend that no such deductions can be drawn from

the authorities cited. He further takes the position that the guardian or committee is the agent of the government and not the agent of the veteran.

We contend that a guardian is an agent for his ward, and a payment to him of money is a payment to his ward. He is appointed by the county court in the county where the ward resides. The court that appoints him requires of him a good and sufficient bond with sound and safe sureties to protect his ward from any loss or misapplication, that is made of the money. In the petition in the case at bar petitioner states as follows:

> "That by an order duly and regularly made by the Breathitt County Court, on the 29th day of September, 1919, the Plaintiff, Sam Spicer, was duly and regularly appointed the Guardian of said Letcher Spicer and duly qualified by taking the oath required by law and **executing bond.**"

It is plain to be seen that the Guardian or committee, Sam Spicer, in the case at bar is under bond for the money that he had on deposit in the Hargis Bank and Trust Company, at the time it closed in the sum of $6,070.80. The surety on his bond was approved as being good by the Breathitt County Court. There are no allegations in Plaintiff's petition to the contrary, and the surety on said bond is good. Sam Spicer drew this money from the government as the guardian and committee of the incompetent veteran, Letcher Spicer, after he had executed a good bond. He had a right to deposit the money in any bank he desired. He did deposit the money in the Hargis Bank and Trust Company, in the same manner as any of the other depositors. As far as the assets of the Bank are concerned he stands in the same position as any other depositor, and is entitled to file his claim as a common creditor to receive the same percentage on his claim as any other depositor. If, after liquidation of the bank he only receives a percentage of his claim, he then has a good bond with

good surety upon which the veteran, Letcher Spicer, may recover the balance of his money. He cannot lose any portion of his money and it certainly would be both unjust and unfair to the rest of the depositors of the bank to allow him a preferred claim against the assets of the bank and lessen their percentage of their deposits, when he has full protection for all his money under the bond.

On page six of petitioner's brief, will be found the opinion of the Court of Appeals of Kentucky, reported in 244 Ky., 68, in which that court in the case at bar ruled as follows:

> "A careful examination of the Statutes of the United States fails to reveal any expressed provision authorizing the preference given to this claim, and none has been pointed out.—Furthermore we find nothing in the Acts of Congress relating to adjusted compensation and War Risk Insurance from which to draw a reasonable inference that such preference is warranted or was intended."

It is true that the highest courts in some of the States have held, and construed the Statutes of United States agreeable to the contention of petitioner. None of these cases seem to have been brought to this court. We find in the decisions of the highest courts in the many states must conflict on their rulings on certain principles of law. While Nebraska, Missouri, Iowa and Virginia have decided in favor of the contention of the petitioner, Kentucky and other states have decided strongly against the petitioner's contention. Since we know that the several states have conflicting rulings on many principles of law, about all there is to conclude from the decisions, is that what is the law in one State, is not the law in other states.

We therefore conclude that the Statutes of the United States cited by petitioner do not authorize a construction of said statutes contrary to the decisions of the highest Courts of Ken-

tucky, which has decided that petitioner is entitled to no preference on the assets of the Hargis Bank and Trust Company.

Respectfully submitted,

**JESSE I. MILLER,**
**HENRY L. SPENCER,**
**Counsel for Respondent.**

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## BRIEF FOR RESPONDENT

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JESSE I. MILLER,
HENRY L. SPENCER,
Counsel for Respondent.

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P. 294; Spelman vs. Aldrick, 126 Mass. 113: Friend v. Garcelon, 77 Me. 25 52 Am. Rep. 739; Crane v. Linneus, 77 Me. 59; State Jardin, Prosecutor v. Fairton Sav. Fund & Bldg. Asso. 44 N. J. L. 376; Martin v. Hurlburt, 60 Vt. 363, 14 Atl. 649; Sims v. Walshman, 9 Ky. L. Rep. 912, 7 W. 557; Robinon v. Walker 82 Ky. 80, 56 Am. Rep. 878; Cranz v. White 27 Ky. 319, 41 Am. Rep. 408 ---------- 5 and 6

The intervention of a guardian does not leave pension funds still in the hands of the Government so that they are still payable or due to the ward as expressed by that section, so as to exempt the funds from assessment, execution, and taxation, but when paid to the guardian, the title and possession have both passed from the Government, hence the exemption provided for by section 454 no longer is applicable. 132 Kan. 223, 294, Pac. 915, 38 U. S. C. A. Sec. 454 ---------- 6

The exemption is to protect Veterans from claims of creditors, but did not give the soldier an advantage over his debtors, Price v. Society for Savings, 64 Conn. 326; Mobley v. Jackson 156 S. E. (Georgia) 23, 71 A. L. R. 1178 ---- 5

**"For when paper is indorsed without restriction for a depositor and is at once passed to his credit, by the bank to which he delivers it, he becomes a creditor of the Bank."** Douglas vs. Federal Reserve Bank 2171 U. S. 489; Burton vs. U. S. 196 U. S. 283 49 L. Ed. 482; Union Electric Steel Co. vs. Imperial Bank, 286 Fed. 857; General American Tank Car Corp. vs. Goree, 296 Fed. 32 ---------- 6 and 7

Argument ---------- 7 to 12

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IN THE

# Supreme Court of the United States

No. 388

LETCHER SPICER BY SAM SPICER, Guardian and Committee, - - - - - - - - - Petitioner

versus

J. BRYAN SMITH, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company, - - - - - - - - Respondent.

## BRIEF FOR RESPONDENT

On Writ of Certiorari to the Court of Appeals of Kentucky, to review a decision reversing a judgment of the Breathitt Circuit Court, decreeing a priority in favor of Petitioner on the assets of Hargis Bank and Trust Company in liquidation.

### STATEMENT OF FACTS

The facts admitted in the pleadings are as follows:

(a) Letcher Spicer, plaintiff below, was a World War veteran that had been adjudged to be mentally incompetent and permanently disable by service connected disabilities. The said veteran has been and is now in the Government Hospital at Chillicothe, Ohio. After being adjudged mentally incompetent, Sam

Spicer, was appointed by the Breathitt County Court, his committee, and on the 8th day of July, 1929, he executed bond, approved by the Breathitt County Court, with the Fidelity and Deposit Company of Maryland as his surety for the faithful performance of his duty. (See Tr. 2 & 9).

(b) On February 6th, 1930, the Hargis Bank and Trust Company, of Jackson, Kentucky, closed its doors and went into the possession of the Banking Commission of Kentucky for liquidation. The respondent J. Bryan Smith was appointed Special Deputy Banking Commissioner and Liquidating Agent, and took charge of said Bank and all its assets. (See Tr. 2).

(c) On the day the Bank went into the hands of the Banking Commission of Kentucky, Sam Spicer, Committee for Letcher Spicer, had on time deposit in said Bank, $6,070.80, bearing interest at the rate of 5 per cent per annum. This money had been paid in monthly installments by the Government of the United States to Sam Spicer, committee, for Letcher Spicer. He in turn deposited it in the Hargis Bank and Trust Company, at various times, in the name of Sam Spicer, Guardian. (See Tr. 2 & 8).

(d) It is admitted by the pleadings that at the time the Hargis Bank and Trust Company closed its doors it was insolvent. It is admitted by the pleadings that when final liquidation is had its assets will pay the depositors about 50% of their deposits. (See ans. Tr. 7.)

(e) It is also admitted by the pleadings that the $6,070.80, which was on deposit in the Hargis Bank and Trust Company in the name of Sam Spicer, guardian, was money paid to him by the United States Government as War Risk Insurance and disability compensation. (See Tr. 2).

The Petitioner by his cause of action in the Breathitt Circuit Court, sought a preference over other depositors on the assets of

Hargis Bank and Trust Company, in liquidation, under section 3466 of the Revised Statutes of the United States. The Breathitt Circuit Court, adjudged petitioner the preference he sought. An appeal was taken from that judgment to the Court of Appeals of Kentucky by the Liquidating Agent and the judgment of the lower court was reversed by the Court of Appeals by a decision recorded in 244 Ky. 68 50 S. W. 2nd. 64. See Tr. 12 to 17).

A Writ of Certiorari having been granted petitioner, this action is before this court to review the decision of the Court of Appeals of Kentucky.

## CONSTRUCTION OF SECTION 3466

The question for determination in this case necessitates a construction of section 3466, Revised Statutes of the United States. It is contended by the Petitioner that in order to properly construe that section a consideration must be made of the entire World War Veterans act, approved June 7th, 1924, and amendments thereto. The entire act having been duly considered and discussed in brief resisting writ of certiorari, we will eliminate from this brief a review of the whole act, and discuss only the sections relied upon by petitioner and authorities construing it. (Section 3466.)

> "Sec. 3466, Priority of debts due United States established. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor in the hands of the executor or administrators, is insufficient to pay all the debts due from the deceased, the debts due the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding,

**concealed or absent debtor are attached by process of law as to cases in which an act of bankruptcy is committed."**

**A similar question to the one in the case at bar has been presented to this Court in a construction of 4747, Revised Statutes of the United States, passed March 3rd, 1873 (38 U. S. C. A. Sec. 54), and the reasons advanced by the court in a construction of that act apply equally in a construction of section 3466.**

(Section 4747:)

> "No sums of money due, or to become due, to any pensioner, shall be liable to attachment, levy or seizure, by or under any legal or equitable process whatever, whether the same remains with the Pension Office or any officer or agent therefor,—But shall inure wholly to the benefit of such pensioner."

This Court in construing this section said:

> "It is not that pension money shall be exempt from attachment in all of its situations and transmutations. It is only to be **exempt in one situation,** to wit, when 'due or to become due.' "
>
> "The exemption provided by the act protects the fund only while in the course of transmission to the pensioner. When the money has been paid to him it has inured wholly to his benefit, and it is liable to seizure as opportunity presents itself." McIntosh vs. Aubrey 185 U. S. 122.

The supreme Court of Kansas in an opinion rendered by Mr. Justis Brewer, construing a similar section to section 4747, made its ruling in substance as follows:

> The protection extended under the terms of the statute is to be an undelivered sum of money, applying

to money due or to become due and not to money paid or in possession." Cranz vs. White, 27 Kans. 319; 41 Am. R. 408.

In the case of Price vs. Society for Savings, 64 Conn. 326 (1894), the court held that pension monies deposited in a savings bank were not subject to attachment by a creditor, but here we are not dealing with pension monies in the strict sense of the term, nor are we dealing with an attaching creditor.

In the instant case the veteran is seeking to make his debtor an insurer of the value of his money.

> Jackson, a confederate soldier, drew a pension from the State of Georgia, under a law which exempted pensions from garnishment and other legal processes. He deposited one hundred twenty-five dollars in a bank and took a certificate of deposit therefor. The bank knew the funds were pension monies. The Bank thereafter became insolvent and paid a fifteen per cent dividend.
>
> Upon a petition to have a certificate of deposit declared a prior lien, on the theory that it was pension money, it was held that monies were exempted from the claims of creditors of the veteran, but did not give the soldier a preferred claim over his debtor's assets.
>
> Mobley vs. Jackson, (1930) 156 S. E. Georgia, 23 71 A. L. R. 1178.

When money received as a pension has come into the actual possession and control of the pensioner, then it has "inured wholly" to his benefit, and is no longer exempt. Rozelle v. Rhodes, 116 Pa. 129, 9 Atl. 160. Holmes v. Tallada, 125 Pa. 133, 3 L. R. A. 219, 17 Atl. 238; 18 Am. & Eng. Enc. Law. p. 294; Spelman v. Aldrick, 126 Mass. 113; Friend v. Garcelon, 77 Me. 25 52 Am. Rep. 739;

Crane v. Linneus, 77 Me. 59; State, Jardin, Presecutor, v. Fairton Sav. Fund & Bldg. Asso. 44 N. J. L. 376; Martin v. Hurlburt, 60 vt. 364, 14 Atl. 649; Sims v. Walsham, 9 Ky. L. Rep. 912, 7 S. W. 557; Robinon v. Walker, 82 Ky. 60, 56 Am. Rep. 878; Cranz v. White 27 Ky. 319, 41 Am. Rep. 408.

The supreme court of the State of Kansas, construing the effect of 38 U. S. C. A. section 454, (cited by Petitioner), as it relates to civil war pension funds, ruled in substance as follows:

> The intervention of a guardian does not leave pension funds still in the hands of the Government, so that they are still **payable or due** to the ward as expressed by that section so as to exempt the funds from assessment, execution, and taxation, but, when paid to the guardian, the title and possession have both passed from the Government, hence the exemption provided for by section 454 no longer is applicable.
>
> 132 Kan. 223, 294, Pac. 915.

It can be gleaned from all of the various sections of the Revised Statutes that the purpose of Congress was to protect the pensioner, or the person to whom a pension was to be paid, from his creditors before payment was made by the government. There can be no inference drawn from any of the sections that the pensioner was to have a priority or advantage over his debtors.

When a person deposits money in a bank, the depositor is a creditor of the Bank and the bank is his debtor. This court has established that rule by a decision in which it said:

> "For when paper is indorsed without restriction by a depositor, and is at once passed to his credit, by the Bank to which he delivers it, he becomes a creditor of the Bank; The Bank becomes owner of the paper and in

making the collection is not the agent for the Depositor."

Douglas vs. Federal Reserve Bank 2171 U. S. 489; Burton vs. U. S. 196 U. S. 283, 49 L. ed. 482; Union Electric Steel Co. vs. Imperial Bank, 286 Fed. 857; General American Tank Car Corporation vs. Goree, 296 Fed. 32.

## ARGUMENT

A consideration of section 3466, on which the petitioner solely relies for a preference will show what two questions must be determined.

FIRST:

Was the Hargis Bank and Trust Company at the time it closed indebted to the United States for the money on deposit in the name of Sam Spicer, Guardian?

SECOND:

Was Sam Spicer, Guardian for Letcher Spicer, the Agent of the Government or the agent of his ward?

Dealing with the first question we first note that section 3466 provides that whenever any person indebted to the United States is insolvent, whether he be dead or alive, the debt to the United States must first be paid and satisfied.

If the Hargis Bank and Trust Company was indebted to the United States for the money on deposit, in question, we reach the inevitable conclusion that plaintiff's petition presents no cause of action. We note from the caption of the petition that the United States is not a party to the suit. The guardian, Sam Spicer, does not bring the action as an officer, or agent of the United States, and the pleadings do not disclose that the United States is an any way concerned in the action. We are therefore forced to the conclusion that if Sam Spicer was holding the money of Letcher Spicer, as the Agent of the United States, his pleadings makes no

disclosure of that fact. Our deductions must therefore be carried on to the ultimate conclusion, that we have an individual suing for indebtedness due the United States. If that theory of the petitioner is true in fact, which respondent denies, the petition could state no cause of action for money due the United States.

Dealing with the second proposition we refer to the brief of petitioner and quote from it as follows:

> "Money paid by the government under the statute, in question, is in the nature of a pension. The funds are created by the same supreme power, the Government."

If that statement be true, then is the Guardian the Agent of the Ward? In the case at bar and other similar cases where the person to whom pension money is due from the Government, is an incompetent, the government must have some person or firm to whom to pay the money. The incompetent or the ward must have some person or firm to transact his business and to care for him. The Government requires that incompetents have guardians or committees appointed by the local government where they reside, to receive the money from it for them. The pension money will not be paid until the appointment is made and the guardian or committee has executed bond for the faithful performance of his duties in disbursing and expending the money for the benefit of his ward. In the case at bar, Sam Spicer was appointed by the Breathitt County Court, committee or guardian for Letcher Spicer. He executed a bond in the penal sum of $20,000.00 with the Fidelity and Deposit Company of Maryland, as his surety, for the faithful performance of his duties to his ward. That bond is of record in the county court clerk's office of Breathitt County, Kentucky, in full force, effect and virtue.

The Guardian or Committee, has charge of the Ward's person. It is his duty to see that the ward is properly fed, properly clothed and properly provided for and supported. He contracts for his

ward's needs, and pays his bills. The Guardian or Committee is required to make annual reports to the County Court and itemize his receipts and disbursements for his ward. The county court has power to approve or disapprove his annual settlements. It has power to surcharge his settlements. It has power to remove him for dereliction of duty to his ward. It has power to increase or decrease the bond or to require additional surety on the bond for the protection of the ward.

If the Committee or Guardian is the Agent of the United States Government, why all of this proceeding in the local county court? Why any appointment by the County Court? Why any bond required in the County Court? If he be the Agent of the United States Government why should not the law provide that the United States Government appoint the guardian or committee and receive and approve a bond for him? We are therefore forced to the inevitable conclusion that the guardian or committee is acting in every capacity for his ward. He is not only the Agent to receive and disburse his money, but he is the agent of the ward with personal supervision of the ward, and is in charge of all the ward's property, business and affairs.

Since Attorney for petitioner admits that there is no difference in money paid to pensioners and other government money paid to persons, we insist that this court has already decided the question in the case at bar, by its decision in McIntosh vs. Aubrey 185 U. S. 122, in which this court said:

> "It is only to be **exempt in one situation** to wit: when due or to become due. The exemption provided by the act protects the fund only while in the course of transmission to the pensioner, when the money has been paid to him, it has inured wholly to his benefit and is liable to seizure, as opportunity presents itself."

The writer of this brief could not, and would not attempt to command stronger language drawing the distinction as to when the money is exempt. It is common reason that the Government has no interest in how the pensioner or soldier spends the money after it has been paid over to him. It is further common reason to say that the Guardian, or committee who has charge of the very person of the ward together with all of his property, is the Agent of that ward, receiving the funds for him. The possession of the funds by the guardian or committee is the possession of his ward.

While it is to be admitted that some of the States have decided in favor of petitioner's contention, equally as many States, if not more, have upheld the ruling of this court in the above cited case.

We contend that section 4747 has stronger language for the exemption of money, when applied to the admitted facts in the case at bar, than section 3466 relied upon by petitioner. Under 3466 before any preference or priority or exemption could apply, it must first be determined that it is money due the United States. The petitioner's cause of action fails upon that one point.

## SUMMARY

We contend that a guardian is an agent for his ward, and a payment to him of money, is a payment to his ward. He is appointed by the county court in the county where the ward resides. The court that appoints him requires of him a good and sufficient bond with sound and safe sureties to protect his ward from any loss or misapplication, that is made of the money.

It is admitted that Sam Spicer, guardian or committee has executed two bonds, one on September 29th, 1919, with personal sureties, the other one July 8th, 1929, over six months before the Hargis Bank and Trust Company

closed, in the penal sum of $20,000.00, with the Fidelity and Deposit Company of Maryland as his surety.

It is plain to be seen that the Guardian or Committee, Sam Spicer, in the case at bar is under bond for the money that he had on deposit in the Hargis Bank and Trust Company, at the time it closed in the sum of $6,070.80. The surety of his bond was approved as being good by the Breathitt County Court, and the surety on the bond is good. Sam Spicer drew this money from the government as the guardian and committee of the incompetent veteran, Letcher Spicer, after he had executed a good bond. He had a right to deposit the money in any bank he desired. He did deposit the money in the Hargis Bank and Trust Company, in the same manner as any of the other depositors. As far as the assets of the Bank are concerned he stands in the same position as any other depositor, and is entitled to file his claim as a common creditor and to receive the same percentage of his claim, he then has a good bond with good surety upon which the veteran, Letcher Spicer, may recover the balance of his money. He cannot lose any portion of his money and it certainly would be both unjust and unfair to the rest of the depositors of the Bank to allow him a preferred claim against the assets of the bank and lessen the percentage of their deposits, when he has full protection for all his money under the bond.

We find in the decisions of the highest courts in the many states much conflict on their rulings on certain principles of law. There are conflicting opinions on the questions presented in the case at bar, and that question should be determined by this court in order that the several states may rule in uniformity on the question.

We believe that the decision of the Court of Appeals of Kentucky is based upon logic and sound reason and is a true exposition

of the law on that question.

We therefore conclude that the statutes of the United States cited by petitioner do not authorize a construction contrary to the decision of the Kentucky Court of Appeals, and that the petitioner is entitled to no preference on the assets of the Hargis Bank and Trust Company, and is a common creditor on an equal basis with all of its many other depositors.

Respectfully submitted.

JESSE I. MILLER,
HENRY L. SPENCER,
Counsel for Respondent.

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# Supreme Court of the United States

OCTOBER TERM, 1932.

No. 388.

LETCHER SPICER, By SAM SPICER, Guardian and Committee, *Petitioner,*

vs.

J. BRYAN SMITH, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company, *Respondent.*

## RESPONDENT'S SUPPLEMENTAL BRIEF.

JESSE I. MILLER,
*Counsel for Respondent.*

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## RESPONDENT'S SUPPLEMENTAL BRIEF.

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Pursuant to permission of the Court granted at the conclusion of the oral argument, respondent submits herewith the following short supplemental brief.

As pointed out upon oral argument, the decisions of the four State courts upon which petitioner relies all grow out of certain *dictum* in the case of *Manning v. Spry*, 121 Iowa 191, which arose under Section 4747, Revised Statutes, a Civil War pension statute. The extreme latitude of the Iowa courts in construing Civil War pension legislation was called to this Court's attention, particularly the case of *Diamond v. Palmer*, 79 Iowa 578.

Respondent's view in the case at bar is supported by the following State cases:

*State, ex rel Smith v. Shawnee County Commissioners*, 132 Kan. 233, 294 Pac. 915 (Certiorari denied 283 U. S. 855, 75 L. ed. 1462).
*Shippee v. Commercial Trust Company*, 161 Atl. (Conn.) 775.
*Puffenbarger v. Charter*, 165 S. E. (W. Va.) 541.
*United States Veterans Bureau v. Thomas*, 156 Va. 902.

As to the Virginia case, upon which petitioner relies as supporting his view, it was pointed out on oral argument that this case in reality supports respondent's position. In this connection the Court's attention is invited to the following language of the Virginia court:—

> "The Veterans Bureau, *not having a direct beneficial interest in the estate of the incompetent*, may not be 'an interested party' in the limited or technical sense * * *."

but that the Bureau had a sufficient interest in the guardianship proceedings, because of the solicitude of Congress for World War veterans, to permit its classification as "an interested party" under the Virginia statute.

In addition to the foregoing, respondent's view is, of course, supported by the decision of the Court of Appeals of Kentucky in the case at bar.

The true significance of the several sections of the World War Veterans Act relied upon by petitioner as showing a legislative intent to retain title to war risk insurance and compensation in the United States is, it is believed, most aptly stated by the Connecticut court as follows:—

> "These and other analogous provisions of the Act evidence the solicitude of the Congress for the welfare of the veteran who has become mentally incompetent

to manage his own affairs and an intention to safeguard the payment to him of the compensation and disability benefits to which he might be entitled under the Act so that they should not be dissipated or the veteran deprived in any way of their full benefit. We do not, however, find in the Act any intention, express or implied, that the title to the monies payable to him is to remain in the United States after they have been paid over to his conservator and until they have been actually paid into the hands of the ward or disbursed for his benefit." (*Shippee v. Commercial Trust Co., supra.*)

In addition to the foregoing supporting authorities, the Court's attention is invited to the further fact that the Comptroller of the Currency is charged with the duty of interpreting certain provisions of the World War Veterans Act in connection with insolvent *national* banks. The Comptroller has uniformly and consistently adopted the rule of the Kentucky court in the interpretation of these statutes. The construction placed upon them by an administrative officer charged with their execution is entitled to great weight. *Heath v. Wallace*, 138 U. S. 573; *United States v. Johnston*, 124 U. S. 236.

The practice and construction of the Comptroller of the Currency, as set out in an official communication from him to counsel for respondent, are printed herewith as an Appendix hereto.

Upon the foregoing, it is respectfully urged that the judgment of the Court of Appeals of Kentucky be affirmed.

Respectfully submitted,

JESSE I. MILLER,
*Counsel for Respondent.*

## APPENDIX.

TREASURY DEPARTMENT

WASHINGTON

December 3, 1932.

Mr. Jesse I. Miller,
Attorney at Law,
Commercial National Bank Building,
Washington, D. C.

Dear Sir:

Pursuant to your request the office of the Comptroller of the Currency is submitting herewith its views on the question presented to the Supreme Court of the United States in the case of Smith v. Spicer's Guardian and Committee, 244 Ky. 68, 50 S. W. (2) 64, in which case the Supreme Court has recently granted a petition for writ of certiorari to the Court of Appeals of the State of Kentucky.

This department is concerned in the principal issue presented to the court in the case by reason of the fact that it is asserted by petitioner that money paid by the United States Government to the guardian of an incompetent as War Risk Insurance and Adjusted Compensation is money of the United States until it actually reaches the beneficiary, hence the fund is the subject of priority of payment to the guardian in the distribution of assets of insolvents by virtue of Section 3466 of the Revised Statutes of the United States. The interest of this office is lodged in the fact that should the Supreme Court of the United States determine such funds constitute money of the United States until it reaches the beneficiary such ruling will directly affect this office in similar cases where guardians' deposits in insolvent national banks are claimed, not as preferred but, as secured claims by reason of pledges of securities with the Treasurer of the United States to protect funds

of the United States in designated depositaries. We are not concerned from the standpoint of a preferred claim, since Section 3466 of the Revised Statutes of the United States is inapplicable in the distribution of assets of insolvent national banks by reason of its conflict with Section 5236 Revised Statutes of the United States (Section 194, Title 12 U. S. C. A.), which latter section requires the ratable distribution of assets of insolvent National banks to their creditors. See Cook County National Bank v. United States, 107 U. S. 445, to the effect that the provisions of the ratable distribution section exempt national banks, which have failed from the class of insolvent persons out of whose estates demands of the United States are to be paid in preference to other creditors.

Section 618, Title 38, United States Code Annotated, as amended July 3, 1926, provides as follows:

> "No sum payable under this chapter to a veteran or his dependents, or to his estate, or to any beneficiary named under Part V of this chapter, no adjusted service certificate, and no proceeds of any loan made on such certificate shall be subject to attachment, levy, or seizure under any legal or equitable process, or to national or state taxation, and no deductions on account of any indebtedness of the veteran to the United States shall be made from the adjusted service credit or from any amounts due under this chapter."

It has been necessary for this office to construe the effect of Section 618, Title 38, U. S. C. A., above quoted, in its relation to attachment, execution, taxation, and deduction for debts of funds of this character in national bank cases. We have consistently held on the question of the applicability of the foregoing Federal statute, (which we believe has more bearing on the immediate question before the court than the other Federal statutes cited by the attorney for the guardian,) to guardians' deposits in national banks, that said statute does not operate to give to the depositors

of a closed national bank any element of a preferred claim for the following reasons, first, that title to the funds pass from the Government upon payment, completely discharging the Government of its obligation, and second, that the funds then belong to the estate of the ward, and the debt is due to said estate, and not to the United States, and third, since the debt is not due to the United States, Section 3466 does not apply.

In 1882 the Supreme Court of Kansas in an opinion rendered by Mr. Justice Brewer, construed a similar section of an act of Congress, namely, Section 4747 Revised Statutes of the United States, passed March 3, 1873 (38 U. S. C. A. Section 54), and the reasons advanced by the court in a construction of that act apply equally in a construction of the statute above quoted. The effect of the holding in that case (Cranz v. White, 27 Kans. 319, 41 Am. R. 408) is that the protection extended under the terms of the statute is to an undelivered sum of money, applying to money due or to become due and not to money paid and in possession. The Supreme Court of the United States similarly construed section 4747 U. S. R. S. in McIntosh v. Aubrey, 185 U. S. 122, where the court established the definite rule, with respect to the application of that section, on funds paid under the Civil War Pension Act, that the exemption provided by the act protects the funds only while in the course of transmission to the pensioner that when the money has been paid to him it has "inured wholly to his benefit" and is liable to seizure as opportunity presents itself.

The Supreme Court of the State of Kansas in State ex rel. Smith, Atty. Gen. v. Board of Commissioners of Shawnee County, et al, 132 Kan. 233; 294 Pac. 915, construing the effect of section 454 (respecting Civil War Pension funds) Title 38 U. S. C. A., held that the intervention of a guardian does not leave pension funds still in the hands of the Government so that they are still "payable" or "due"

the ward as expressed by that section so as to exempt the funds from assessment, execution, and taxation, but, when paid to the guardian the title and possession have both passed from the Government, hence the exemption provided for by Section 454 is no longer applicable. By analogy, the view taken by the Court in the foregoing case is consistent with the ruling of this office respecting the application of Section 618, Title 38, U. S. C. A. It is our thought on this subject that the provisions of Section 618 apply only until title to the check or other credit instrument issued by the Government has passed from the payee or beneficiary, or when payment is actually made by the Government of the check issued under the service certificate, in the event no transfer of title of the credit instrument is effected but the check is immediately cashed. This view is supported by Martin v. Guilford County, 158 S. E. 847, and Lambert v. Guilford County, 158 S. E. 849, in which cases the court held that the World War veteran, receiving the money under the act of Congress, upon payment, acquired full and unrestricted title to the same, free from any control of the Government of the United States, and that section 618, Title 38 U. S. C. A. no longer applies. It will be noted, however, that neither of these cases are bank cases.

We have examined State v. First National Bank of Pawnee City, et al, 237 N. W. 623, 121 Nebr. 521; State v. Security Bank of Creighton, 121 Nebr. 515; Butler v. Cantley, 47 S. W. (2) 258; Anderson v. Olivia State Bank, 243 N. W. 398; Manning v. Spry, 121 Iowa, 191; U. S. Veterans Bureau v. Thomas, 136 Va. 902; Ramisch v. Fulton, 180 N. E. 735, and Smith v. Spicer, 50 S. W. (2) 64, all of which cases touch on the point presented, and while we believe that the better rule is that announced in Smith v. Spicer's Guardian and Committee, *supra*, it would appear that the question is one requiring the determination of the Supreme Court of the United States, in order to effect a uniform rule throughout the states. The reasoning adopted by the Court of Appeals of Kentucky is to the effect that payment by

the United States completely discharges its obligation to the soldier. In this circumstance the funds immediately pass from the possession and control of the Government and become the estate of the ward, thus eliminating the application of section 3466 Revised Statutes. The principle announced is supported by the fact that the debt of the bank is then due to the estate of the incompetent, not to the United States, and as such, is controlled solely by the laws of the state with respect to priority in the liquidation of state banks. As indicated, we believe the holding of the court in Smith v. Spicer's Guardian and Committee, *supra*, is a logical and reasonable answer to the guardian's contentions.

This office has adopted a like ruling on the additional ground that the unrestricted endorsement by the depositing checkholder passes title to the credit instrument and its proceeds, and the relation then created between the parties is that of debtor and creditor, on which construction we consider our position supported by City of Douglas v. Federal Reserve Bank of Dallas, 271 U. S. 489, where Mr. Justice Stone ably discusses the rule above announced. The doctrine established in City of Douglas case is consistent with Commercial National Bank v. Armstrong, 148 U. S. 50, to the effect that the fact of collection and actual credit of proceeds of a collection item creates the relationship of debtor and creditor, under which relationship title to the funds passes to the banker, following Marine Bank v. Fulton Bank, 2 Wallace, 252.

We have recently corresponded with the Veterans Administration on this subject, expressing our views, heretofore set forth, and by letter dated November 7th, 1932, the Solicitor for the Administration, J. O'Connor Roberts, Esq., advises us that their attorneys have been consistently instructed not to advise fiduciaries to claim preference in such cases on the grounds that such funds are funds of the United States. We are enclosing for such use as you may deem advisable a copy of the Solicitor's letter, in which he

relates the familiarity of their office with the decisions and statutes cited by the Comptroller of the Currency in that behalf. The contemporaneous construction placed upon a law by the officers charged with its administration, where uniform and long continued, will be given great weight by the courts in passing upon a statute so construed, and in case of doubt will be controlling. See Heath v. Wallace, 138 U. S. 573; United States v. Johnston, 124 U. S. 236; Brown v. United States, 113 U. S. 568; United States v. Moore, 95 U. S. 760; and Merchants National Bank v. United States, 42 Ct. Cls., 6. The fact that the Veterans' Administration and this office have construed the law as indicated, while in no way binding on the courts, is entitled to consideration.

It will be observed that the theory is advanced that the guardian who receives the money from the Veterans Administration is an officer of the United States. In this connection it is noted that the pleadings in the action lay no foundation to support argument based upon this premise, as the guardian does not bring the action as an officer of the United States, nor do the pleadings disclose that the United States is in any way concerned in the action. We conclude from this that the United States is not a party to the litigation, and is not concerned in the result. We would appreciate a copy of your brief in the Supreme Court, when it has been printed.

Yours very truly,

F. G. AWALT,
*Acting Comptroller.*

Inc.

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CLERK

IN THE

# Supreme Court of the United States

NO. 388

OCTOBER TERM, 1932.

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LETCHER SPICER, by SAM SPICER, Guardian and Committee,
*Petitioner*,

vs.

J. BRYAN SMITH, Special Deputy Banking Commissioner,
*Respondent*.

---

## BRIEF ON BEHALF OF J. N. PEYTON, COMMISSIONER OF BANKS OF THE STATE OF MINNESOTA, AMICUS CURIAE.

---

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### THE LAW.

I. KENTUCKY AND MINNESOTA CASES ARE IN CONFLICT.

In the case here for review Letcher Spicer became insane while in the military service of the United States in the World War. This was in 1918. Since then he has been unable to handle his own affairs. Sam Spicer, under order of appointment of the Breathitt County Court, State of Kentucky, has been

acting as the guardian and committee for the incompetent. On May 5, 1930, Sam Spicer, as such guardian and committee, had on deposit in the Hargis Bank & Trust Company, a banking institution located at Jackson in Breathitt County, Kentucky, some $6,070.00 paid to him as such guardian and committee by the Director of the United States Veterans' Bureau as compensation and war risk insurance due his ward under the provisions of the World War Veterans' Act of 1924. On that day this bank failed and was taken over by the Banking Department of the State of Kentucky for liquidation purposes. J. Bryan Smith, Special Deputy Banking Commissioner, was placed in charge. Sam Spicer, as such guardian and committee, filed a claim for the $6,070.00, asserting that the claim should be allowed as a preferred one. Ultimately, right of preference was denied by the Court of Appeals of the State of Kentucky.

The Minnesota Supreme Court, on similar facts, has reached a conclusion directly opposite to that of the Kentucky Court.

In Minnesota, the Commissioner of Banks, appointed by the Governor of the State, has charge of the liquidation of all state banks, closed by reason of insolvency. Mason's Minn. Statutes, 1927, Secs. 5323, 7688, 7689 and 7690. His jurisdiction is exclusive, and his decision as to claims and all other matters are conclusive and not reversable by the courts unless arbitrary or contrary to law.

Northwestern Fuel Co. v. Live Stock State Bank, 182 Minn. 276, 234 N. W. 304;

Hoff v. First State Bank, 174 Minn. 36, 218 N. W. 238;

American State Bank v. Jones, 184 Minn. 498, 239 N. W. 144.

In the liquidation of the Olivia State Bank of Olivia, Minnesota, facts developed identical with those involved in the Ken-

tucky case. Edward Snicker, a World War Veteran, became insane. It was determined by the Veterans' Bureau that he was entitled to receive compensation and war risk insurance payments under the World War Veterans' Act 1924. The probate court of the county of Edward Snicker's residence appointed Lars K. Anderson his guardian. The Olivia State Bank closed its doors on June 5, 1931, and on that day the Commissioner took the institution over for liquidation purposes. At the time of the closing, the guardian had on deposit $374.21, proceeds of war risk insurance, and $975.87, proceeds of compensation. The guardian filed a claim with the Commissioner covering these proceeds, asserting that the same was entitled to preference. The Commissioner denied preference, allowing the claim as a general one. The Minnesota Supreme Court overruled the decision of the Commissioner, holding the claim entitled to preference. Anderson v. Olivia State Bank, et al., ... Minn. ..., 243, N. W. 398.

2. Interest of Commissioner of Banks of Minnesota in controversy.

The Commissioner feels that the Minnesota Supreme Court erred in its ruling that such claim was entitled to preference. He feels that the decision of the Kentucky Court is the correct one. He is called upon almost daily to pass on claims of this kind, and he is therefore vitally interested in the ultimate outcome of this litigation. This brief, amicus curiae, is submitted on his behalf.

3. PAYMENT TO A GUARDIAN IS PAYMENT TO INCOMPETENT BENEFICIARY AND DISCHARGES OBLIGATION OF THE UNITED STATES WITH RESPECT TO SUCH PAYMENT; CLAIM OF GUARDIAN ON ACCOUNT OF MONEYS DEPOSITED IN FAILED BANK GENERAL ONE AND NOT ENTITLED TO PREFERENCE.

Referring to the case under review, it seems to us that when the United States paid the $6,070.00 to Sam Spicer, as guardian, it made payment to Letcher Spicer, the incompetent. It parted with control of the money; it had nothing more to do with it. The money passed to the guardian and his possession of it was the possession of the incompetent, subject to the law and orders of the appointing court with respect to the handling thereof. Upon paying the money to the guardian, the control of the money passed from the United States acting through the Veterans' Bureau and the Director thereof to the State of Kentucky, acting through its county court and the guardian appointed thereby. When Sam Spicer placed the money in the bank the relation of debtor and creditor arose; and upon failure of the bank and its liquidation, Sam Spicer had a claim against the bank the same as anyone else having a general deposit therein at the time of closing. His status was that of general creditor and as such he was entitled to share in the assets of the bank along with the other general creditors. He was entitled to nothing more. The Kentucky Court was right in so holding.

Payments to Sam Spicer as guardian constituted payments to Letcher Spicer, the incompetent, and discharged the obligation of the United States to the incompetent to the extent of the payments made; this on the elementary proposition that payment of money due an incompetent to his guardian constitutes payment to the incompetent and discharges the debt.

Lamar v. Miscow, 112 U. S. 452, 28 L. Ed. 751, 5 S. Ct. 221;

Taylor et al., v. Bemiss, 110 U. S. 42, 28 L. Ed. 64, 3 S. Ct. 441;

Maclay v. The Equitable Life Insurance Society of the United States, 152 U. S. 499, 38 L. Ed. 528, 14 S. Ct. 678;
28 C. J. 1128, 1130 and 1131;
12 R. C. L. 1123 and 1125;
21 R. C. L. 29.

4. THEORY THAT MONEY PAID A GUARDIAN CONTINUES MONEY OF THE UNITED STATES UNTIL DEVOTED TO USE OF INCOMPETENT BENEFICIARY ERRONEOUS:

(1) *No express provision in law to this effect,*

(2) *No language in law justifying implication of intention to this effect.*

(3) *Language of the Act clearly negatives such intention,*

But it is urged that payment of compensation and war risk insurance to the guardian of an incompetent beneficiary differs from the ordinary situation; that the guardian is but the agent of the United States, and payment to him does not constitute payment to the beneficiary; that the money in the possession of the guardian constitutes money of the United States until finally devoted to the use of the beneficiary. From all this it is argued that when a guardian has war risk and compensation moneys in a bank at the time it fails, the claim arising by reason of the deposit is entitled to preference because the moneys are moneys of the United States. Debts due the United States are entitled to preference under R. S. Sec. 3466.

State ex rel. Spillman v. First State Bank, 121 Neb. 515, 237 N. W. 623;

State ex rel. Sorenson v. Security Bank, 121 Neb. 521, 237 N. W. 620;

Butler v. Cantley (Mo. App.), 47 S. W. (2d.) 258;

Anderson v. Olivia State Bank, .. Minn. ..., 243 N. W. 398.

It is the general rule as stated by the Court of Appeals of the State of Kentucky in the instant case that deposits made by a guardian of an incompetent are not entitled to preference simply because they are deposits of a guardian. This leaves as the sole question—are the moneys funds of the United States, or in other words, is the guardian the agent of the United States in the transaction?

This question has been answered in the negative by courts other than the Kentucky Court. We refer to the cases of:

Shippee v. Commercial Trust Company (Conn.), 161 Atl. 775;

State ex rel. Smith v. Shawnee County Commissioners, 132 Kan. 233, 294 Pac. 915 (1931, Certiorari denied, 283 U. S. 855, 75 L. Ed. 1462, 51 S. Ct. 648);

Puffenbarger v. Charter, ... W. Va. ...., 165 S. E. 541.

No provision can be found in the World War Veterans' Act 1924 as amended, expressly making the guardian of an incompetent beneficiary the agent of the United States for the handling of such incompetent's compensation and war risk moneys. This must be conceded. Are there provisions in the legislation showing intention that the guardian should be such agent? Analysis of the legislation demonstrates, it seems to us, a total absence of any such provision, a total absence of any provision reasonably tending to show any such intention. The views of those claiming such intention are well summarized in the dissenting opinion in the case of Shippee v. Commercial Trust Company, supra, as follows:

> "This money was paid to the guardian Callery under the World War Veterans' Act of 1924 (June 27, 1924) c. 320, appearing in title 38, U. S. C. A., Sec. 421 et seq., p. 193. Section 434 of title 38 makes the Director of the Veterans' Bureau responsible 'for the proper examination, medical

> care, treatment, hospitalization, dispensary and convalescent care, * * *', etc., and other service necessary for the pensioner. Section 450 of title 38, U. S. C. A., provides among other things that the payment of the pension money 'may be made' to a conservator or guardian who has been appointed by the State wherein the ward is domiciled, and if he fails to render accountings to the director showing the application of the money for the benefit of the pensioner, the director, in his discretion, may suspend such payment to the guardian. It is also there provided that such payments of pension money as have not been turned over to the institution in which the incompetent pensioner may be an inmate, may be held in the treasury to the credit of the pensioner and may be disbursed by the director in his discretion. Pension money which has been paid to a guardian, which might otherwise escheat to the state under a state law, shall be returned to the United States by the guardian to be credited to current appropriations for payments of compensation insurance. Under Section 556 of title 38, U. S. C. A., a guardian is criminally liable to the United States for misuse of the pension money in his hands. I think it is apparent that Congress intended to prevent pension moneys of the United States donated by it for the care and support of its wards, from being appropriated to any other purpose before that care and support is actually given, or, if competent, the money paid into his hands."

In the majority opinion the Court recognizes that the sections of the law, referred to in the dissenting opinion, and other analagous sections evidence the solicitude of the congress for the welfare of the veteran who has become mentally incompetent to manage his own affairs, and an intention to safeguard the payment to him of the compensation and disability benefits to which he is entitled, so that they should not be dissipated or the veteran deprived in any way of their full benefit, but in this connection says:

> "We do not, however, find in that act any intention, express or implied, that the title to the moneys payable to him is to remain in the United States after they have been paid over to his conservator, and until they have been actually paid into the hands of the ward, or disbursed for his benefit. We find no justification in the act for the claim that the conservator acts as the agent of the government through whom the funds are paid to his ward."

We feel that the majority opinion correctly states the situation.

In addition to this, it seems to us that the provisions of the legislation show, rather than intention of agency so far as the guardian is concerned, recognition on the part of the congress that upon payment to the guardian title to and all control over the money passes from the United States, title to the incompetent, with right of possession in his guardian, and control to the state through its court having jurisdiction of the guardianship. Let us consider this suggestion for a moment.

Sec. 21, Chap. 320, World War Veterans' Act 1924, (38 U. S. C. A. Sec. 450), as amended, provides that where a payment is due an insane beneficiary, such payment "may be made" to the person who is constituted the guardian of such beneficiary by the laws of the state of his residence. "May" as here used means "shall", that is, with respect to payments, where there is a duly appointed, qualified and acting guardian, up to the time of suspension of payments to the guardian as later on provided in this section. There is no escape from this, for no provision is made anywhere in the act for payment, in case of an insane beneficiary, to anyone other than such guardian, except where payment thereto is so suspended. Payments must be made to the guardian until such suspension. What control does the law give to the Veterans' Bureau or its Director, with respect to payments made to a guardian? None

whatever. That no such control was intended to be conferred is made evident beyond dispute by the provisions of this same section that "whenever it appears that any guardian * * * is not, in the opinion of the director, properly executing the duties of his trust or has collected or is attempting to collect fees, commissions, or allowances that are inequitable or are in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then and in that event the director is hereby empowered by his duly authorized attorney to appear in the court which has appointed such fiduciary and make proper presentation of such matters to the court * * *." This language clearly indicates the intention of the Congress that where there is a guardian, payments must be made to such guardian until there is suspension of payments as provided by the language: "Provided that the director in his discretion may suspend payments to any such guardian * * * who shall neglect or refuse, after seasonable notice, to render an account to the director from time to time showing the application of such payments for the benefit of such minor or incompetent beneficiary." But the language does more. It shows beyond any question, it seems to us, recognition on the part of the Congress that payments to a guardian place the moneys covered by such payments beyond the reach and control of the United States acting through the Veterans' Bureau and the director thereof; in other words, that payments to a guardian pass title to the funds to the incompetent beneficiary, possession to the guardian for the benefit of such beneficiary, and control to the state acting through the court having jurisdiction of the guardianship. Payment to the guardian constitutes payment to the incompetent beneficiary. If this were not the understanding of the

Congress, why did the Congress see fit to confer express power upon the director to appear in the court having jurisdiction of the guardianship for the purpose of presenting to such court facts as to the conduct of the guardian with respect to the handling of payments made to him? If it be true that it was the intention of the Congress, upon payments being made to the guardian, that title to the funds was to remain in the United States, there would have been no occasion for conferring such power on the Director. If it had been the thought of the Congress that title was to remain in the United States, a provision of this kind would not have been inserted in the law, for such a provision is absolutely inconsistent with such a thought and therefore entirely out of place. Title being in the United States and the guardian being its agent, power to resort to the court of appointment for any purpose would not have been provided, for the matter of control of the guardian and the funds and whether the guardian should be discharged on the basis of certain facts would be something wholly within the jurisdiction of the United States acting through the Veterans' Bureau and its Director. But the law does not provide for any such control. It gives no power to the director to require the guardian to return unexpended funds; no power to discharge, if dissatisfied with him. It seems to us quite manifest that if it had been the intention of the Congress that the funds paid to the guardian should remain funds of the United States until actually devoted to the use of the incompetent beneficiary, Congress would have inserted provisions in the law giving the director, in case of dissatisfaction with the guardian, power to call upon such guardian to return unexpended funds, and thereupon to dispense with his services. Certainly provisions of this kind would have been inserted in the law if it had been the thought of the Congress that guardians

in the handling of the funds in question were to be and constitute agents of the United States. What does Congress do? It simply gives the director power to appear in court and present facts with respect to the conduct of the guardian. That is all. It is left for the court having jurisdiction of the guardianship to determine what is to be done with respect to the guardian, based on the facts so presented. The director is powerless to do anything subject to the single exception that he may suspend payments to the guardian where the guardian neglects, after reasonable notice, to render an account to the director from time to time showing the application of payments for the benefit of the incompetent beneficiary. It seems to us that there is here unmistakable recognition by the Congress that its enactment provides for payments to the guardian of an incompetent beneficiary and that upon payments being made to him the funds pass beyond the control of the United States. The Congress makes no provision for continued control by the Bureau or its director after payments are made to the guardian, that is, with respect to such payments; it is only as to payments made in the future, that is, payments made after the suspension by the director of payments to the guardian that control with respect to payments is given to the director. The Congress gave the power to the director to appear in court and present the facts as to the conduct of the guardian with respect to the handling of the funds and stopped there, manifestly because it was intended that as to a guardian and payments already made to him the court having jurisdiction of the guardianship was to have full and exclusive control.

The Court, in Puffenbarger v. Charter, Banking Commissioner et al., supra, after referring to the sections of the law having reference to suspension of payments to a guardian by

the director and embezzlement of funds by a guardian, relied upon, as the court states, by the Nebraska and Iowa courts, very well says:

> "Amendments to Section 450, made in 1928 and 1930 (38 U. S. C. A. #450), detail meticulously how suspended payments in the hands of the director shall be disposed of; but nowhere in the federal enactment is any specific provision whatever for federal control over or recovery of the payments theretofore made a guardian, except in case of escheat. To the contrary, the director is empowered only to 'make proper presentation' to the court which appointed the guardian, if the latter is not 'properly executing the duties of his trust.' This limitation of the powers of the director is inconsistent with the theory of federal control over the guardian or over the money after payment to him."

As bearing on the intention of the Congress it is significant that the law contains no provision requiring the guardian to give a bond; no provision requiring the guardian to return funds to the United States upon demand of the Veterans' Bureau or its director; no provision giving the Veterans' Bureau or its director authority to demand the return of such funds; no provision giving the Veterans' Bureau or its director any power or control or direction over funds after they are paid to the guardian. Certainly, if it had been in the mind of the Congress that funds paid to a guardian were to continue funds of the United States until actually devoted to the use of the incompetent beneficiary, and that the guardian was to be the agent of the United States until then, some such provisions would have been inserted in the law. The absence thereof shows unmistakably that it was never the intention that upon payment to a guardian, the relationship of agency was to arise as between the United States and the guardian. Such absence shows intention directly contrary to this, an

intention that upon payment to a guardian the usual, ordinary and well understood thing was to happen. The United States was to be relieved of its liability to the incompetent beneficiary to the extent of the payment. The moneys were to be transferred to the guardian for handling for the incompetent beneficiary, the same as other assets of the ward coming into the possession of the guardian.

So, it seems to us, that those courts holding the claim of a guardian against a failed bank to be entitled to preference on the theory that the claim is that of the United States, the guardian being simply the agent of the United States, pretty well blind themselves to the wording of the law and what that wording may legitimately be said to show by way of intention. A fair reading of the law permits no such construction as these courts place thereon. Their decisions, if left to stand, will, it seems to us, constitute nothing less than usurpation of legislative functions.

## II.

## PRACTICAL CONSIDERATIONS.

As heretofore pointed out, the cases holding that veteran's compensation and war risk insurance funds deposited by a guardian of the veterans in a bank are entitled to priority of payment upon the bank becoming insolvent all proceed on the theory and are based on the doctrine that such funds are funds of the United States, and as such are entitled to preference under a statute giving debts due the United States priority over other indebtedness.

Not only is such doctrine unwarranted in law, but the consequences of its approval would be disastrous and far-reaching.

To this end the following practical phases of the situation

involved in sustaining the doctrine of preference are submitted for the consideration of the Court:

1. Guardianship involves mental incapacity rather than physical. Under the doctrine of priority of payment the funds of a veteran sound in body but mentally incompetent and under guardianship are preferred while those of a veteran sound in mind but physically incapacitated are not. If Congress had any thought of priority of payment being essential to the accomplishment of its purpose, would it have allowed the one to be protected and the other not? Consideration of such fact shows clearly the absence of any intent on the part of Congress to bring about the result contended for by the Appellant herein.

2. The veteran's guardian is appointed by the state court. Such court controls his actions. The guardian's bond, in Minnesota, runs to the Judge of Probate, and his successors in office and may be prosecuted by leave of said court in the name and for the benefit of any person interested.

Mason's Minnesota Statutes 1927, Sec. 8912.

The bond protects the ward against any misappropriation or misapplication of *his* funds. If the money deposited in a bank is money of the United States and not of the ward, the question naturally arises, what protection has the United States against embezzlement or misapplication of such funds by the guardian? If the guardian embezzles the money if it has not become the property of a ward, can the latter demand payment anew from the United States? Also, in such a case what recourse has the United States, if any, against the sureties on the guardian's bond.

3. What of divided control? The guardian is responsible to the Probate Court subject to its order. If this is money of the United States and not of the ward what right of control

has the Probate Court over it? Can the guardian spend this money without accounting to the Probate Court or court of his appointment? Is he accountable only to the United States and if so, to what branch or governmental subdivision thereof? The Probate Court clearly has jurisdiction only over property of its ward. If this money is property of the United States for one purpose it must be for all. There can be no such thing as title in the United States for one purpose and in the ward for another.

4. During the last five years thousands of banks have failed throughout the United States. In Minnesota 236 state banks have closed their doors. The affairs of many of the banks have been completely liquidated and final dividends paid. In others, partial dividends have been paid. Hundreds of claims by guardians of veterans for funds arising out of Federal compensation have been filed, allowed and paid as general claims.

Since the decision in—

Anderson vs. Olivia State Bank (supra),

a definite campaign has been inaugurated by those interested in veterans to have their guardians refile their claims as preferred claims. As a practical matter the situation while disturbing is perhaps not so serious so far as the Commissioner of Banks of Minnesota acting as liquidator is concerned where there still remain funds on hand to pay such claims in full if they are filed promptly as in the case of where the funds have all been distributed.

What is to be done in the following situations:

(a) Where the bank has been completely liquidated or liquidated to the extent that the funds remaining are insufficient to pay such claims in full.

Ordinarily the claimant would be estopped from disturbing the distribution already made in reliance upon the claim having been filed as a general claim.

But if this money is that of the United States, a different rule may apply. In such case under well settled rules estoppel can be set up as a defense only when the Government is acting in its proprietary rather than in its sovereign capacity.

In the case of—

Birmingham vs. United States, C. C. A. 8th Circuit, 4 Fed. (2d) 508

and

Sternfield vs. United States (Dis. Ct.) 32 Fed. (2) 789

it was held that the Government in devising and putting into effect its plan of war risk insurance was not acting in a proprietary capacity and that estoppel could not be asserted against it in attempting to enforce insurance under the Act.

In the case of—

McIntosh vs. Dill, 205 Pac. (Okla.) 917

it was held that the United States in acting as guardian for Indians was performing an act sovereign in scope.

The above are referred to not as attempting to brief a question not before the Court for specific determination but to illustrate that the suggested difficulties are not imaginary.

If the money is that of the United States, if no estoppel exists, can the United States sue to recover the difference between the amount paid and the full amount of its claim, and if so, who should it sue?—the guardian for failure to file a preferred claim, or the creditors who have thus received more than their share, or the liquidator of the bank, in Minnesota, the Commissioner of Banking.

The situation if the decision of the Court of Appeals of Kentucky is reversed will be prolific of litigation.

(b) Where the bank is still in process of liquidation and some funds remain to be distributed.

In such case must all distribution cease until the liquidator can ascertain what general claims involve veteran's compensation and war risk insurance funds and if he errs in his investigation who is liable?

The statutes of Minnesota and other states provide an orderly procedure for notice of the time within which claims must be filed, a time limit for the filing of claims, allowance or disallowance by the Commissioner of Banks as liquidator and finally a review by the courts in case of dispute.

If the United States is acting in its sovereign capacity will notice to the guardian of time to file claims, his action in filing a general instead of a preferred claim as to such part of the funds as arise from veteran's compensation or war risk moneys be binding on the United States?—and if not, when can any funds of any bank be finally distributed?

No one desires to see veteran's compensation and war risk insurance funds dissipated or diverted by bank failures or otherwise from the object for which they are paid.

Opposed to the above difficulties which involve and will involve the war veteran in litigation, delay in liquidation of closed banks and distribution of funds to depositors, there is a simple and easy method of procedure, one approved by the Supreme Court of Minnesota, and strange though it may seem, not referred to in the opinion of the Court in the case of—

Anderson vs. Olivia State Bank, supra,

though its basic reasoning is absolutely inconsistent with that in the Anderson case, namely, that the funds are property of the United States and not of the ward.

**In the case of—**

**Snicker vs. Byers, 176 Minn. 541; 224 N. W. 152,**

**Edward Snicker was an incompetent and under guardianship in the Probate Court of Renville County. He served in the World War and had compensation for disability coming to him from the Federal Government. Compensation was paid to his guardian and deposited by the latter in banks in his name as guardian. The Probate Court of Renville County made an order requiring all guardians in proceedings pending in that court who had money of their wards deposited in banks to require special bonds from such banks to secure the repayment of such deposits, otherwise to withdraw such deposits. This order was communicated to Snicker's guardian and made known to the officers of the banks with whom he had funds on deposit as such guardian. One of the banks gave such a bond which was delivered to the Judge of Probate, approved by him and filed in the guardianship proceedings. Thereupon the guardian withdrew the funds he had on deposit with other banks and transferred them to the bank which had given the bond and thereafter continued to deposit funds received from the Federal Government in such bank. The bank failed and being a national bank was taken over by the Comptroller of Currency and liquidated. The guardian had on deposit in the bank some $7,000 of Federal compensation. Demand for payment was made on the sureties on the bond and payment not being made suit was brought thereon. The defense was that the bond was not authorized by any statute and that the Judge of Probate had no authority to require it and the bond for that reason was null and void and that there was no consideration for it. The Court after carefully considering the question and stating that the jurisdiction of the Probate Court embraces all of the ward's property and affairs and includes the care and**

protection of the estate of the wards, held that it was within the broad power of the Court to take steps which it might deem to be for the best interests of the ward even where no procedure therefor was prescribed by statute and that the order made requiring guardians to file bonds for money on deposit in banks was valid, reasonable and proper. If the money in question was not the property of the ward and was not part of his estate, it is clear that the Court would have had to have reached a different conclusion but being property of the ward and being subject to the control and jurisdiction of the Probate Court it was held that the latter could properly protect the interests of the ward by demanding a bond.

As stated, the basis of this decision is deemed to be directly contra to the basis upon which the decision in the case of Anderson vs. Olivia State Bank was decided.

Either the money was the property of the ward or the property of the United States. If of the latter, the Court had no jurisdiction over it. However, be that as it may this decision shows clearly the proper basis for protecting the funds of war veterans deposited in banks, namely: the Probate or other Court having jurisdiction over the guardian has but to issue its order as did the Renville County Probate Court requiring as a condition precedent to the deposit of such funds the giving of a bond with adequate sureties protecting against loss due to failure or closing of the bank, and the veteran will be assured adequate protection, the liquidator of a closed bank will not be hampered or delayed in the distribution of funds to depositors and the United States will not become involved in possible claims and litigation.

**For the reasons hereinbefore set forth, it is respectfully suggested that the decision of the Court of Appeals of the State of Kenutcky should be affirmed.**

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES.

No. 388.—October Term, 1932.

Letcher Spicer, by Sam Spicer, Guardian and Committee, Petitioner,
*vs.*
J. Bryan Smith, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company.

On Writ of Certiorari to the Court of Appeals of the Commonwealth of Kentucky.

[March 13, 1933.]

Mr. Justice Butler delivered the opinion of the Court.

Petitioner was a United States soldier in the World War and while in the service suffered permanent mental incompetency. He became entitled to receive from the United States war risk insurance and disability compensation.[1] September 19, 1919, the county court of Breathitt county, Kentucky, appointed for him the guardian above named who qualified and has ever since acted as such. The United States paid to the guardian the installments due his ward. The guardian deposited them in the Hargis Bank and Trust Company. It became insolvent and February 5, 1930, conformably to the laws of the State, all its assets were taken over by respondent acting as special deputy banking commissioner and liquidating agent. At that time the guardian had on deposit $6,070.80 derived from such payments. The assets of the bank were not sufficient to pay more than one-half the total owing to depositors. Claiming priority under R. S., § 3466[2], the guardian demanded payment of his deposit in full. Respondent held that petitioner was only entitled to share ratably with other creditors and refused to pay.

[1]See Arts. III and IV, War Risk Insurance Act of October 6, 1917, 40 Stat. 405, 409. Tits. II and III, World War Veterans' Act, 1924, approved June 7, 1924, 43 Stat. 615, 624; 38 U. S. C., §§ 471-502, 511-518.

[2]"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby

Petitioner brought this suit in the circuit court of Breathitt county to enforce the asserted priority. That court gave him judgment as prayed. The court of appeals reversed on the ground that the bank was not indebted to the United States on account of the deposit made by the guardian. 244 Ky. 68. The question has not been considered here and, decisions upon it in the state courts being in conflict,[3] we granted a writ of certiorari. 287 U. S. —.

Petitioner relies upon the clause of § 3466 declaring that whenever any person indebted to the United States is insolvent the debts due to the United States shall first be satisfied. He asserts that, under Acts of Congress later to be considered, the war risk insurance and disability compensation paid to a guardian of an incompetent veteran remains the money of the United States so long as it is subject to his control and suggests that the guardian is a mere instrumentality of the United States for the disbursement of such money for the benefit of the veteran. And he maintains that the deposit here involved is money of the United States and that the bank is indebted to it therefor.

The pertinent substance of the provisions invoked by petitioner follows. Section 21 (1) and (2) of the World War Veterans' Act, 1924, provides that where any payment under the Act is to be made to a person mentally incompetent, it may be made to the person who is constituted guardian by the laws of the State or is otherwise legally vested with responsibility or care of the claimant or his estate. It authorizes the director to suspend payments to a guardian who shall neglect or refuse to render to the director from time to time an account showing the application of such payments for the benefit of the incompetent.[4] Section 22 declares

established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed." 31 U. S. C., § 191.

[3]The decisions supporting petitioner's contention are: State ex rel. Spillman *v.* First State Bank, 121 Neb. 515. Anderson *v.* Olivia State Bank, — Minn. —, 243 N. W. 398. Those opposed are: Shippee *v.* Commercial Trust Co., — Conn. —, 161 Atl. 775. Puffenbarger *v.* Charter, — W. Va. —, 165 S. E. 541. Cf. State ex rel. Sorenson *v.* Security Bank, 121 Neb. 521. Butler *v.* Cantley (Mo.), 47 S. W. (2d) 258. Manning *v.* Spry, 121 Ia. 191.

[4]43 Stat. 613, as amended by § 2, Act of July 2, 1926, 44 Stat. 791; § 2, Act of May 29, 1928, 45 Stat. 964. 38 U. S., § 450.

that such payments shall not be assignable or subject to the claims of creditors and that they shall be exempt from taxation, but makes them subject to claims of the United States under the Act against the veteran.[5] Sections 21 (3) and 26 provide that in specified cases insurance and disability compensation remaining unpaid or in the hands of a guardian at the death of the veteran shall escheat to the United States.[6] Section 214 provides that where an incompetent veteran receiving disability compensation disappears the director may make payments to his dependents.[7] Section 505 provides for punishment of guardians who shall embezzle such funds.[8]

The guardian, appointed by the county court, was by the laws of the State given the custody and control of the personal estate of his ward and was authorized to collect and receive the money in question. Ky. Stats., § 2030. And unquestionably payment to the guardian vested title in the ward and operated to discharge the obligation of the United States in respect of such installments. *Taylor* v. *Bemiss*, 110 U. S. 42, 45. *Lamar* v. *Micou*, 112 U. S. 452, 472. *Maclay* v. *Equitable Life Assurance Society*, 152 U. S. 499, 503. *Martin* v. *First Nat. Bank of Rush City*, 51 F. (2d) 840, 844. *In re Estate of Stude*, 179 Ia. 785, 788. *State, ex rel.* v. *Shawnee County Comm'rs*, 132 Kan. 233, 243; certiorari denied 283 U. S. 855. Schouler, Dom. Rel., 6th ed., § 892.

The provisions for exemption, non-assignability and suspension of payments plainly imply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose to safeguard to beneficiaries the appropriations and payments made for their benefit (*United States* v. *Hall*, 98 U. S. 343, 353. *Westfall* v. *United States*, 274 U. S. 256) and evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves. The clauses subjecting such payments to claims of the United States against the veteran and providing for escheat to the United States make against petitioner's

[5]43 Stat. 613. 38 U. S. C., § 454.

[6]Section 21 (3) added by § 5, Act of July 3, 1930, 46 Stat. 993. 38 U. S. C., § 450. Section 26, World War Veterans' Act, 1924, 43 Stat. 614, as amended by § 3, Act of July 2, 1926, 44 Stat. 792. 38 U. S. C., § 451.

[7]Added by § 21, Act of July 3, 1930, 46 Stat. 1000. 38 U. S. C., § 501a.

[8]Added by § 20, Act of March 4, 1925, 43 Stat. 1312. 38 U. S. C., § 556.

claim. Neither would be appropriate or necessary if the money paid to such guardian continued to belong to the United States until actually disbursed by him for the veteran's benefit.

Petitioner cites *United States* v. *Hall, supra*. The question there was whether Congress has power to prescribe punishment for the embezzlement by guardians of pension money paid them in behalf of their wards. The indictment showed that the money alleged to have been embezzled was the property of the accused guardian's ward. The court held that to insure transmission unimpaired to the beneficiary the United States might annex such conditions to the donation as it deemed appropriate and that the guardian was bound to accept the payment subject to the terms of the grant and that Congress had power to protect its gift until it passed into the hands of the beneficiary. There is no suggestion in the opinion that the United States had any interest as owner in the money embezzled. The power of Congress to punish such misappropriation is not limited to acts causing loss to the United States. *Westfall* v. *United States, supra*, 258-259. Petitioner also cites *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483. But in that case the United States itself was the guardian and through its officer, the superintendent of an Indian reservation, made the deposit which upon insolvency of the bank was held a preferred claim under § 3466. The case is not in point as here the guardian was appointed pursuant to state law to act for and on behalf of his ward. He was not an agent or instrumentality of the United States. *Shippee* v. *Commerical Trust Co.*, — Conn. —, 161 Atl. 775. *Puffenbarger* v. *Charter*, — W. Va. —, 165 S. E. 541. *State, ex rel.* v. *Shawnee County Comm'rs, supra*. It results that the deposit in question does not belong to the United States and, as indebtedness to it is essential to priority, the guardian's claim under that section is without merit. Other contentions made by petitioner are so plainly inapplicable here as not to require discussion.

*Judgment affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*